United States Court of Appeals

for the Second Circuit

APPENDIX

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75-7165
75-7166

United States Court of Appeals
For the Second Circuit

Docket No. 75-7166

INTERNATIONAL RAILWAYS OF CENTRAL AMERICA,
Plaintiff-Appellant,

against

UNITED BRANDS COMPANY,
Defendant-Appellee.

Docket No. 75-7165

INTERNATIONAL RAILWAYS OF CENTRAL AMERICA,
Plaintiff-Appellant,

against

COMPANIA AGRICOLA DE GUATEMALA,
Defendant-Appellee.

On Appeal from the United States District Court for the Southern District of New York

JOINT APPENDIX
VOLUME IV

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UNITED STATES COURT OF APPEALS
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PAGINATION AS IN ORIGINAL COPY

H A R O L D W. H A A S E, called as a witness by the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BENDER:

Q Mr. Haase, what is your present address?

A My present address is 619 Oakmont Avenue, Sun City Center, Florida.

Q And, Mr. Haase, when did you first go to work for the International Railways of Central America?

A November 28, 1931.

Q And prior to this time did you work for the United Fruit Company?

A Yes, sir. I worked for the United Fruit Company in Costa Rica and Nicaragua from about June 1927 until November 28, 1931.

Q And what was your first position at the IRCA?

A My first position at the IRCA was secretary to the president.

Q And who was the president at that time?

A Charles F. Myers.

Q And that position lasted until when, sir?

A That lasted until 1934.

Q And what was your position at that time?

A Then from 1934 until 1936 I was trainmaster and port superintendent at Cutuco in El Salvador.

Q And then, after that, what position did you assume?

A From '36 to '39 I was superintendent of transportation in El Salvador.

Q And after that what position did you assume?

A From '38 to '40 I was trainmaster and superintendent of transportation in Guatemala.

Q Now, when you mentioned Salvador before, that was the Salvador Division of the railroad, is that correct?

A Yes.

Q Then, after that position, what position did you assume?

A From '41 to '43 I was port and terminal superintendent in Puerto Barrios in Guatemala.

Q And the spotting or picking up, this varied up to 1946, did it not, that spotting and picking up that you described? Sometimes the spotting or picking up was done by CAG; as a matter of fact, most of the time it was done by CAG after 1946, isn't that correct, the spotting and picking up?

A Yes.

THE COURT: Let me go back for a minute so I don't get confused.

How long did you remain in the employ of the railroad?

THE WITNESS: From 1931, your Honor, until 1965.

THE COURT: '65?

THE WITNESS: Yes, sir.

THE COURT: Why don't we get to the later period. Then we'll know a little bit more about what the case is about

MR. BENDER: Yes, sir.

Q After you were superintendant at Puerto Barrios, what did you then assume as a position in the railroad?

A I was--in 1944 I was road master in the engineering department in Guatemala as well as for a period of several

months as superintendent of a trucking company which the railroad owned in the mountains.

Q And then after that what was your position?

A The latter part of 1944 and about the middle of '45 I was transferred to El Salvador as a general manager of that division.

Q And as general manager of the El Salvador division, how long did you stay there?

A At that particular time, about eight to ten months.

Q And then what was your next position in IRCA?

A From the end of '45 to '48 I was transferred back to Guatemala as the general manager of that division.

THE COURT: Was that '45 to '48, then?

THE WITNESS: Yes, sir.

Q And as general manager of the Guatemala division, who was your superior in this period of time?

A Thomas Bradshaw, the president.

Q And you reported directly to the president?

A Yes, sir.

Q And after 1948, what was your position?

A From 1948 to 1950 I was named general manager of both countries, Guatemala and Salvador.

Q And then in 1950?

A From 1950 to 1956 I was promoted to vice president and general manager of the system, or in both countries.

Q And then what was your next position?

A From 1956 to 1959 I was executive vice president of the company.

Q And then in 1959?

A In 1959 I was elected president, chief executive officer and director.

Q And it was in 1959 that you replaced Mr. Bradshaw?

A Yes.

Q And then, in 1961, when Mr. McGovern died on about February 16th--

THE COURT: Wait a minute. We haven't gotten to McGovern yet.

MR. BENDER: Withdrawn. I'm sorry.

Q While you were president of the IRCA in 1959--

THE COURT: We didn't have a termination date. Let's do it simply.

How long did you stay as president?

THE WITNESS: From 1959 to 1965, your Honor.

THE COURT: '65. And at that time you terminated all your relationship with the company and retired, is that right?

THE WITNESS: Yes.

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Q Now, Mr. Haase, there was a special banana car, was there not?

A Yes.

Q That was utilized by the railroad?

A Yes.

Q And how many banana cars were owned by CAG in this period, '45 to '64--well, in the period '45 to '60. Let's take that period.

MR. KLINGSBERG: I think that is much too broad unless it is established that it was the same.

THE COURT: I think so.

A By CAG during all that time approximately sixty cars.

MR. KLINGSBERG: I object to the question, Mr. Bender.

THE COURT: I know, you did. And I was going to sustain the objection. But it has been answered now.

But apparently through the whole period they had five hundred cars, fifteen years worth?

THE WITNESS: Yes, your Honor.

Q How many did you say?

A 560 CAG cars.

THE COURT: It didn't fluctuate substantially during this period?

THE WITNESS: No, sir.

THE COURT: I want to get my mind clear on one thing. From the west coast to Guatemala, could someone truck bananas as well as send them on your railroad?

THE WITNESS: To Puerto Barrios, no, sir.

THE COURT: There was no trucking facility at all?

THE WITNESS: Before 1959 there was no -- the end of 1959, there was no highway from Guatemala City to the port of Barrios.

THE COURT: When was the highway built?

THE WITNESS: It was inaugurated the end of 1959.

THE COURT: Now, by the time you left in 1965, was there a highway and a trucking system or trucks that ran from the west coast to Barrios, let's say?

THE WITNESS: There was, yes, your Honor, but not for bananas.

THE COURT: Not for bananas. That's what I'm trying to find out.

So that in all the time that you were there, right up through '65, there was no competitive trucking, competitive to your railroad, for the shipment of bananas, is that right?

THE WITNESS: That is true, sir.

Q Now getting back to the cars, the banana cars and the locomotives of CAG that were under the equipment arrangement with IRCA and in the possession of IRCA, was IRCA permitted to use those banana cars on traffic other than CAG's?

A They were when CAG didn't require them or the United Fruit Company didn't require them.

THE COURT: These are CAG cars, owned cars?

THE WITNESS: Yes, your Honor.

THE COURT: And they could be used to ship Standard's fruit, for example?

THE WITNESS: We did at some particular times, yes, when Compania Agricola didn't need them, or United Fruit

THE COURT: Just so I can get a geographical term for this, where were the Standard plantations, the banana plantations?

THE WITNESS: The Standard banana plantations were on the border between Guatemala and Salvador -- between Guatemala and Mexico, which was 375 miles from Puerto Barrios.

THE COURT: That was west of Puerto Barrios, right?

THE WITNESS: West of Puerto Barrios.

THE COURT: And north?

THE WITNESS: West and north.

THE COURT: West and north. And how far was it from the Tiquisate area?

THE WITNESS: 305 miles from Tiquisate to Puerto Barrios. It was about seventy miles -- Standard is about seventy five miles farther north than Tiquisate.

THE COURT: But on a similar longitude west, is that right, approximately?

THE WITNESS: More or less, yes.

Q Now, Standard left its plantations in 1961?

A Yes, sir.

Q When in 1961?

THE COURT: It did what?

MR. BENDER: It left its plantations.

A I believe that was about November 1961.

Q Did a certain event take place prior to their leaving?

A Yes, a hurricane or tornado destroyed t[illegible] plantations almost completely.

Q In fact, did the CAG employ its own crews for unloading the cars at the Barrios wharf and loading aboard ship?

A Yes, sir.

THE COURT: I will sustain the objection.

Let me see if I understand you. The Standard

people were given in effect stevedore services by IRCA, is that right?

THE WITNESS: For which we charged them.

THE COURT: For which they paid?

THE WITNESS: Yes.

THE COURT: And CAG was not given stevedore services, is that right, they had their own?

THE WITNESS: That's right.

THE COURT: Did they have a slip or a pier, too?

THE WITNESS: No, but they had a particular area where they would load the bananas on the opposide side of the pier on what we call the apron of the pier where they could dock their ships and we could load the bananas on without interference with the two cargo piers on the same side.

THE COURT: Was that kept open for them?

THE WITNESS: Yes, sir.

THE COURT: * * * I understood that on one end of the pier, on the apron of the pier, Standard had the preference, and on the other side of the pier United had the preference, is that right?

THE WITNESS: That's right, sir.

[DIRECT EXAMINATION BY MR. BENDER, CONT'D:]

Q Mr. Haase, you testified yesterday at page 80, line 11. The question was:

"Q Mr. Haase, on the Barrios pier did United own some conveyors?"

And you gave an answer:

"A For a short time, yes, sir."

Then the question was:

"Q What period of time?"

And the answer:

"A They had a contrivance which was a rough type of conveyor which they put on about in the late '50s but for some reason, mechanically or otherwise, they only used it off and on, not continuously."

Did you read that testimony last night, sir?

A I did.

Q Would you like to make a correction in that?

A Yes, I would, because what I was referring to was the Standard Fruit Company, not the United Fruit Company. I misunderstood your question.

Q And the description that you had there was a description of the Standard conveyors on the apron, as you described it, on the south side of the Barrios pier?

A Standard conveyor on the apron, yes, sir.

[CROSS EXAMINATION BY MR. KLINGSBERG:]

* * *

O Mr. Haase, in or about November of 1971, do you recall that there was a hurricane in Western Guatemala?

MR. BENDER: In what year?

MR. KLINGSBERG: November 1961.

A Yes, sir.

O Did you actually see the hurricane?

A I did.

O Would you tell us from what vantage point you saw the hurricane?

A From the window of an airplane, flying from Guatemala City to New Orleans.

O And what did you observe?

A I observed over to the right, over the Gulf of Mexico, this storm, and the storm came out of the Gulf of Mexico over this area called Beten--

THE COURT: Pointing to No. 1 on the map.

A -- and it made a U turn from the Gulf of Mexico through Mexico and struck the Guatemala border here at Acajutla, where the Standard plantations were and practically destroyed them, and went on down here to Tiquisate and created quite a bit of damage and then went on and dissipated itself out into the Pacific Ocean (indicating).

Q Subsequently did you fly over the Standard Fruit plantations --

A I did.

Q -- to observe the effects of the hurricane?

A About a week later, several days later, after I returned to Guatemala, I got an airplane and flew down over this whole area and over Tiquisate and back home (indicating).

Q And would you tell the Court, please, what you observed?

A I observed that the plantations of Standard were practically destroyed in their totality, and saw quite a bit of damage, I don't know how much right at the present moment to specify in number of stems, but I understand it was quite heavy.

THE COURT: Where? In Tiquisate?

THE WITNESS: Around Tiquisate, yes, sir, in this area (indicating).

THE COURT: When you say that there was serious damage from a hurricane, what was damaged on these banana plantations?

A The banana plant grows up to a height of, I think, about 15 feet and then the stem shoots out and comes on down, and as it matures it gets heavy and the plant is top

heavy. And when the hurricane comes along with tremendous force, it breaks off the -- the stem breaks off due to this weight and it lops over. It is what they call a break neck.

And then, of course, it is destroyed, the plant.

If the stems are right at the point of maturity, where they can be shipped, in some instances they cut this wind storm damaged fruit from a hurricane or from wind storm damage and ship it. But not to a very great extent, as I understand it.

Q What did you actually see when you looked out the window of the plane when you flew over the Standard Fruit plantations to observe the effects of the hurricane?

A I saw these banana plants with the tops broken off.

Q And you saw that throughout almost the entire plantation?

A Oh, yes. We flew over the whole thing. We made two or three circles around the whole thing (indicating).

Q And, as you testified, it was shortly after that that Standard Fruit left Guatemala and stopped growing bananas there, is that correct?

A Yes, sir.

MR. KLINGSBERG: I would like to mark as Defendant's Exhibit 227 a letter from Mr. Haase to Mr. Yeager dated November 10, 1961. On top of that is a transmittal from Mr. Tennyson to Mr. Yeager dated November 13, 1961.

(Defendant's Exhibit 227 marked for identification.)

Q Were you the author of Defendant's Exhibit 227 for identification, Mr. Haase?

MR. BENDER: Your Honor, could we just wait until I get that document?

THE COURT: Yes.

MR. KLINGSBERG: I have an extra copy.

(Handing.)

A Is this 227?

Q Yes.

A This letter No. 358 from me to Mr. Yeager

on November 10, 1961?

O That's right.

(Pause.)

Can you tell us if you were the author of that exhibit, Mr. Haase?

(Pause.)

Do you recognize your signature on page 3?

A Yes, sir.

O Can you tell us if you are the author of the letter?

A I was, yes, sir.

O Does this exhibit refresh your recollection that when you drove through the CAG plantations you observed that half of the banana acreage was damaged by the hurricane on November 1st?

A Yes, sir. I'll have to correct my previous statement. Evidently it was greater than I recollected at that moment.

O And in order to grow bananas on that land, CAG would have had to rehabilitate it, is that not so?

A Well, I don't know exactly what you mean by "rehabilitate," but they would have had to have cleaned it up and perhaps replanted considerable of it.

O You used the word "rehabilitate" on page 2 at

the top. What does that mean?

A Well, rehabilitate insofar as I meant it was to clean up the damage and to get it back in production.

Now, if you meant the same thing, the answer --

O Did you subsequently learn whether CAG rehabilitate any of that damaged acreage?

A They did some rehabilitation, but how much I couldn't tell you right now. But if I may be permitted to say so, you will note that I also mention a curb on this here in their estimates. And that must be taken into consideration in considering wind storm or hurricane damage.

O Mr. Haase, had you been concerned prior to the hurricane that Standard might start shipping by truck up through Mexico or by some other route?

A I knew that they were studying the possibility, yes

O When Standard decided to go out of business, did you consi-er that you might have lost that business anyway because they might have started shipping by truck?

MR. BENDER: I object.

A No, sir.

MR. BENDER: Speculative.

THE COURT: What is that?

MR. BENDER: I'll withdraw my objection.

A (Continuing) No, sir.

Q Mr. Haase, how many workers were there approximately on the Standard plantations?

A I don't know.

Q Were there approximately 1,000 workers?

A I don't know. I suppose there might have been.

Q After Standard left, did anybody else go into the banana business on their property?

A I understand that there were some local independents that were planning on doing that. But right at the present moment I don't recall that they did.

Q It is a fact, is it not, that at least in part Standard Fruit had some what were called associate producer arrangements with farmers who were growing bananas?

A I believe they did to a certain extent.

Q What does that mean, associate producer?

A We generally called the purchased fruit that they purchase from plantations owned and operated by others than themselves.

May I refer again to this letter number 358? I think it should be brought out what I stated --

Q Please limit yourself to answering my questions.

After standard terminated its operations, did these farmers continue to produce bananas on the land that were the subject of the hurricane?

A I'm not certain.

THE COURT: Well, the hurricane was in November '61, wasn't it?

THE WITNESS: Yes, sir.

THE COURT: And you were part of the railroad in 1965?

THE WITNESS: Yes, sir.

THE COURT: Did you haul any bananas from that old Standard land from 1962, let's say, through 1965? I think that's the question.

THE WITNESS: I don't believe we did, no, sir.

Q You were not aware of any legal restrictions on the growing of bananas on the former Standard Fruit plantation, were you?

A I wasn't, no.

Q Is it a fact that Standard lost approximately 1,600,000 stems in the hurricane, as indicated in Plaintiff's Exhibit 227?

A They lost, so I understand, their whole production. I couldn't pinpoint any particular number of stems at this time.

Q Would you look at page 2 of Plaintiff's Exhibit 227?

A Is that this one (indicating) ?

Q Yes. The first paragraph up from the bottom, about the middle, where it says "Losses are estimated at 1,600,000 stems." Does that refresh your recollection that Standard's losses were approximately 1,600,000 stems?

A That is the estimated loss at that time, 1,600,000 stems.

Q The hurricane which occurred and almost destroyed Standard's plantations and also damaged CAG;s plantations caused IRCA to lose revenue in 1961, did it not?

A Yes.

Q And it also caused IRCA to lose revenue in 1962, did it not?

A Yes, sir.

Q Did IRCA have a contract with Standard Fruit for the carriage of bananas?

A They had a letter arrangement. I suppose you could call it a letter contract.

Q When was the letter arrangement entered into?

A I think the original one was, as I recollect, somewhere around 1947. I believe that's when Standard came in. And then it was revised, I believe, two or three times, up until the time they left the country.

Q Do you know when?

A No, I don't.

Q Do you know what the provisions were of these agreements?

A I'm not too clear on them right now?

Q Did you participate in any of the negotiations?

A No, I didn't.

Q Did IRCA make any claims against Standard for breach of contract as a result of their leaving their plantations in 1961?

A Insofar as I know, no.

THE COURT: As I understand you, Standard was then in Guatemala for fourteen years raising bananas, is that right?

A Yes, sir.

Q Mr. Haase, would you identify for us on the map where the port of Matias De Galves is?

A Right here (indicating).

Q And how far is that from Puerto Barrios?

A About three miles across the bay. It is a little bit longer around the road.

Q When was Matias De Galves first opened for traffic?

A Well, it was opened sometime during 1959 but generally innaugurated, as I recall, with the innauguration of the highway that paralleled our railroad to Guatemala

City at the end of 1959.

Q And what was the name of that highway?

A The Atlantic Highway.

Q Who built Matias De Galves?

A The government of Guatemala.

Q And who built the highway?

A The government of Guatemala, with a loan from the United States.

Q Mr. Haase, I believe you testified just before the recess that the Port of Matias de Galvez opened in 1959. Did I hear you correctly?

A I said I believed it did. The highway was inaugurated in 1959, November, and I suppose the port was inaugurated about the same time, although it was ready before that, I believe.

Q That port was previously called Santo Tomas, was it not?

A Yes, sir.

Q I show you a copy of Defendant's Exhibit 464 for identification and ask if you can identify that as the annual report of IRCA for the year 1955? That's the annual report, isn't it?

A It looks like it.

Q Would you turn to page 5.

A Page 5?

Q Yes.

A Yes, sir.

Q Under the heading, "General," the third paragraph. Does that refresh your recollection that the government port of Santo Tomas was officially placed in service in 1955?

A Yes, sir.

Q It says in this paragraph that the government is working on the construction of a railway line from Santo Tomas to connect with the main line of International Railways in the vicinity of Puerto Barrios.

Was that ever completed?

A I understand it was, but not during my time there.

Q It was not completed during the period of time up until at least 1965, is that correct?

A Until the middle of 1965, anyway.

Q When you left the company?

A Yes, sir.

Q As a matter of fact, that connection by rail between Matias de Galvez and the railway lines was not completed until after the government took over the railroad, isn't that so?

A I have heard something to that effect, but it was not in operation when I left the company.

Q What was the reason why that wasn't completed during the period you were with the company?

A Nationalism.

Q You said the government built the Atlantic Highway which you pointed out instead of connecting with Matias de Galvez, is that correct?

MR. BENDER: I object. What do you mean "instead"? Instead of what? Instead of putting in a connection?

MR. KLINGSBERG: Yes.

A They built the highway, but whether it was built instead of the rail connection is a point to be conjectured.

Q Was the bulk of the import traffic between the Atlantic coast ports and the capitol, Guatemala City?

THE WITNESS: Will you repeat that, please, sir.

(Question read.)

A What? It's only half a question or I don't understand it.

Q I will rephrase the question.

Is it a fact that the bulk of the import freight which came into the Atlantic port of Guatemala was destined for the capitol, Guatemala City?

MR. BENDER: At what time?

A When?

Q In the late 1950s.

A Come in through both ports or one port?

O Let's take Matias de Galvez.

A I would say the majority of that was for the interior of the country, Guatemala City, perhaps.

O Was Galvez equipped to handle ocean-going freighter?

A Yes, sir.

Q Apart from Puerto Barrios and Matias de Galvez, there were no other ports on the Atlantic or Caribbean companies that served on the ocean-going freight, is that correct?

A No.

Q There was another?

A Yes.

Q What was that?

A Livingston.

Q Where is that located on the map?

A About ten miles north of Puerto Barrios and Matias de Galvez.

Q When was that opened?

A Oh, that's been open for a hundred years. Many, many years.

Q Is Livingston insignificant in terms of the amount of traffic that came through as compared to Matias and Barrios?

A Yes, sir. It is an open roadsted.

THE COURT: You mean you have to lighter there?

THE WITNESS: Yes, sir.

Q Is it a fact that until the Government opened Santo Tomas or Matias de Galvez in 1955, almost all exports

came and left Guatemala through Barrios?

A Almost all, yes.

Q Isn't it a fact that the Government port of Matias de Galvez was a more modern port with better equipment than IRCA had at Puerto Barrios?

A To a certain extent, the equipment was better.

Q And it was more modern, wasn't it?

A Well, that depends what you call modern. It was a T-shaped installation where they had a yard and wall, sea wall, and the ships docked one behind the other along this sea wall. Up until the time that I left, there was no rail connection that was operative alongside the cargo ships between the warehouse and the ships, though I understand that's a fact now. And there was, might we say, complete disorganization, or little organization in the handling of ships and import and export cargo.

So even though the installation was newer, it did not, and could not under those conditions, handle the cargo that we could handle at Puerto Barrios.

Q During the period that you were with IRCA, did IRCA petition the Guatemalan Government to complete the rail link to Matias de Galvez?

A They did.

Q And those petitions were denied?

A Well, the result of the petitions was that the rail connection was not made.

Q In addition to denying IRCA a rail access to Galvez, did the Goverment of Guatemala take legal action so that the great majority of imports and exports to and from Guatemala would move through the Government port rather than through IRCA's port at Barrios?

A Yes, sir.

Q What were those legal actions?

A I can't say exactly what the legal actions were, but they issued laws or acuerdo, which is a decree, forcing the majority of in-bound and out-bound cargo over the highway via trucks and through the Port of Matias de Galvez.

Q How did the decree force the traffic to go via the Port of Galvez and the highway rather than Barrios and the railway?

A I don't remember the wording of it, but the result was that Guatemalans were asked or ordered--in these times that perhaps amounted to the same thing--to handle their cargo through that port.

Q In or about 1958, did the Government reduce the wharfage charges at the port of Matias de Galvez?

A I seem to remember something like that, but I couldn't say definitely yes.

Q I show you Defendant's Exhibit 274 for identification, which is a preliminary prospectus dated May 16, 1962, of the B.S.F. Company.

I direct your attention to the second paragraph on page 36, and ask if that doesn't refresh your recollection that in or about 1958 the Government reduced wharfage charges by about 25 per cent in the Port of Matias de Galve

THE WITNESS: What was the question?

(Question read.)

A Along about that time a reduction was proposed and I believe made, but definitely I couldn't say.

Q As a result, IRCA was forced to make similar reductions at Puerto Barrios, is that not so?

A When they made reductions, the IRCA I believe made similar reductions.

Q Isn't it true that up until the time, for example, that Atlantic Highway was completed and the Pacific Coast Highway and the other highway from San Jose to Guatemala City were improved, that IRCA was the only means, for all intents and purposes, of transportation of import-export freight?

A That was true on the Atlantic, yes, sir. But in the other places, no.

Q The completion of these highways and the opening of the port of Matias de Galvez reduced IRCA's income from export and import traffic, did it not?

A Yes, sir, by the amount of tonnage that they handled over such highways compared to what they handled previously.

Q Was the program for the construction of highways and ports initiated under the administration of President Arbenz of Guatemala?

A On the Atlantic, yes. In the rest of the country, no.

Q The Arbenz Government was in power from approximately 1951 to 1954, is that correct?

A Along about those years, yes.

Q And what happened to the IRCA while the Arbenz

Government was in power?

A You'll have to clarify that, sir.

O Well, was the railroad nationalized at any time during the Arbenz regime?

A No, sir.

O Was any action taken against the IRCA in that period?

A In what form?

O Was any adverse action taken by the Government against the railroad company?

A I really don't know how to answer that unless you have something to show me what it is.

O Let me show you this government publication, which we marked Defendant's Exhibit 455 for identification, from which the map was taken, and see if that refreshes your recollection.

MR. BENDER: Your Honor, I am going to object to showing the witness a document that is not in evidence.

THE COURT: Why?

MR. BENDER: For purposes of refreshing his recollection on something.

THE COURT: It is always done. You mark it for identification, you show it to the witness. You can say that his recollection hasn't been exhausted, if you want

to be technical. But once it is exhausted, you may show a witness anything.

O I draw your attention to this paragraph, the second paragraph on page 35, and ask if that refreshes your recollection.

A The second paragraph?

O This one here (indicating).

(Pause.)

A Part of that statement is true and the other part is not.

O What part is true?

A The part that he started the highway, this is only one paragraph, evidently, of a big story here, and it doesn't say what highway. It says, "Began building a highway parallel to the track." It doesn't say what highway.

O Did the Arbenz Government expropriate plantations or lands of the United Fruit Company, or CAG?

A Excuse me? We haven't finished with this question.

O Go ahead, if you have something to add.

A No. I told you that a part of this statement in here is true and part is false.

O Yes. I just asked you to tell us what was true.

A The part was true there was a highway, but it doesn't say what highway. That's the reason I say. There

was a certain highway in the country that he started in the 1950s, but he did not nationalize the company.

O Did he take any action against the company, the IRCA?

A Well, they say, "pressure."

What are they talking about?

O I'm asking you what you know.

A What sort of action, sir?

Q In 1950 you were vice president and general manager in Guatemala?

A Yes.

Q Did you have any problems because of the Arbenz regime?

A We had a lot of problems, through all the regimes, labor problems especially, because the labor was then beginning to feel their muscles and the syndicates, or labor unions, were becoming stronger, making larger demands. We had a lot of difficulties at times trying to get them to comply with their labor contracts, and they would denounce them and we were in many long, drawn out negotiations with them.

Q What did that have to do with the Arbenz regime?

A The Arbenz regime? It says here "Communist infiltration." It was generally understood that the Arbenz regime was a Communistic regime.

Q And the Communists also had a strong influence in the railroad unions, did they not?

A They did. So I understand.

Q Did the Arbenz regime expropriate land of the United Fruit Company?

A I heard that they expropriated some lands. But I wouldn't be qualified to say that they expropriated Fruit

Company lands.

Q Did Government corporations operate any of the truck or bus companies that moved along these highways?

MR. BENDER: Which highways, and when?

MR. KLINGSBERG: The Atlantic Highway, for example?

A Did the Government own them?

Q Any of them, yes.

A I reallydon't know if they were complete owners. I don't recollect now. But I was told at that time by various people in the Government and Guatemalans that the Government had interests in certain of these trucking companies.

Q And were many of the companies that owned the trucks or controlled the trucks, operating out of Matias de Galvez owned by people who were connected with the Government?

A Some of them were, I understand.

Q And other trucking companies were owned by promi-

nent Guatemalans, is that not so?

A That is true.

Q Did the Government take any pro-Guatemalan actions to convince Guatemalans to use the roads instead of the railway, which was owned by an American company?

MR. BENDER: Your Honor, can we have the period that we are talking about?

THE COURT: Yes.

MR. KLINGSBERG: In the late 1950's.

THE WITNESS: I believe I have already answered that. The answer is yes.

Q And when these roads were first opened, there weren't any tolls on them, were there?

THE COURT: I couldn't hear that.

Q When the Atlantic Highway was first opened, there was no toll on it, was there?

A I'm not sure whether the tolls were put on immediately. I know that a short time after they were opened there were tolls placed on the highways.

Let me clarify that, please, sir, and say that they were there a short time after. I don't know when they were placed on them.

Q Isn't it a fact that as the result of the various Government actions, the building of Matias de Galvez, the

building of the highway, the various actions to encourage use of the highway in the Government port, that IRCA was forced to reduce its freight rates for import and export?

MR. BENDER: When?

MR. KLINGSBERG: In the late 1950's.

A From the time that the highway was inaugurated, a short time after and continuing almost until I left, if not until I left, the answer is yes.

Q That would be continuing into the 1960's?

A Yes, sir.

Q And also as a result of this Government action, the majority of the tonnage for imports and exports moved via Matias de Galvez instead of Puerto Barrios, is that not so?

A My recollection is that a large amount of it did. If it is over 50 per cent right now, I couldn't say.

Q And this cost IRCA hundreds of thousands of dollars a year, did it not?

A Well, it cost the railroad an awful lot of money. It might have been in that area.

Q As a matter of fact, it resulted in disaster for the railroad, didn't it?

MR. BENDER: I object to that, your Honor.

THE COURT: Sustained.

Q Do you remember testifying on deposition in this case on February 16 and 17, 1971?

Do you remember that, Mr. Haase?

A May he read it to me? I didn't get that.

(Question read.)

A I gather a deposition in 1971. I don't remember the exact dates now. I think it was in the first part of the year.

Q Do you remember testifying, at page 55, and were you asked this question and did you give this answer:

"Let me ask you about competition of trucks and passenger buses referred to onpage 6. You have a summary there of the situation which speaks for itself.

"Can you tell us how that competition began and how it grew and what the effect on the revenues of the railway was?

"Answer. Yes. Generally, up until 1959, I believe it was, when the Atlantic Highway was completed, between the Atlantic Coast and Guatemala City, the highway was the only means for all intentional purposes of transportation of import-export freight between the Atlantic Coast and the city.

"In 1959 the highway was completed and then immediately truck competition was started and this naturally

reduced our income. But, in connection with that, the Government also built the Port of Matias de Galvez, which was only three miles approximately from our port at Puerto Barrios, and this was a Government port, which later resulted in the Government taking necessary legal actions, necessary as they deemed it legal actions, for the great majority of imports and exports to and from Guatemala that moved through the Government port instead of the IRCA port at Barrios.

"Then the companies that owned the trucks or controlled the trucks operating in and out of Matias de Galvez were either prominent, wealthy Guatemalans or people connected with the Government or the Government itself.

"Along about that time, a very pro-Guatemalan action was taken in the country to convince all people living there, Guatemalans and perhaps foreigners alike, that the business should be given to the Guatemalan trucks or companies rather than to the American company, the IRCA.

"This resulted in a disaster for us as far as reduction in freight rates to and from Matias de Galvez, with the result that themajority of the tonnage moved via Matias de Galvez instead of Puerto Barrios. I can't say it right now what this cost us in money, because of the long time that has elapsed, but I should say it was hundreds

of thousands of dollars per year."

Were you asked that question and did you give that answer?

A I gave that answer, yes.

Q And was that an accurate statement of the facts at the time?

A Would you permit me to read the first paragraph or so? I didn't find it until you were--

Q Yes.

(Pause.)

A I believe you misspoke yourself there on that first part of that answer, or I misunderstood you. I misunderstood you to say, or I understood you to say the highway was the only means for all intentional purposes of transportation. It should read the "IRCA was the only means."

Q If I said that, I misspoke.

The transcript says the IRCA.

A Yes.

Q Otherwise is that an accurate statement of fact?

MR. BENDER: Your Honor, I am going to object to that part of the answer going into the record which talks about disaster in light of the fact that your Honor has already excluded it, and I don't think it should be permitted to be gotten in in this indirect fashion.

THE COURT: It is just that had no reference to anything when Mr. Klingsberg asked it. Now there is a whole answer that said this resulted in disaster.

Now, I know what "this" is.

The objection is overruled.

A I think you should take it, if you'll permit me to say so, not only as a part of the statement, but saying "this resulted in disaster for us." I think you should complete it and continue "as far as reduction in freight rates to and from Matias de Galvez, with the result that the majority of the tonnage moved via Matias de Galvez instead of Puerto Barrios."

We are talking about import and export through that port only.

THE COURT: What freight rates were you talking about there? It is not clear to me? Your freight rates or the truckers'?

THE WITNESS: We had published rates, your Honor, and then, as soon as this highway was opened, the truckers undercut our rates and we had to meet them in our attempt to hold or recover some of the movement.

THE COURT: Yes. But the thing is a non sequitur. If you reduce the freight rates, how could that have the result that the majority moved via Matias de Galvez? You mean despite your reduction of freight rates it moved, the majority moved, from Matias de Galvez; isn't that what you mean?

THE WITNESS: Yes, your Honor. That is what finally was the result.

THE COURT: So that you lose not only the rate but the volume.

THE WITNESS: That's right.

THE COURT: And that was the disaster.

THE WITNESS: They lowered, we lowered. They kept lowering, we had to. And then came this official action from the government trying to insite people to do it.

BY MR. KLINGSBERG:

Q In or about the time that the Atlantic Highway

was opened, had the rates for transportation by truck been much lower than the railway had been charging?

A I didn't hear the first part of that, sir.

Q I said in or about the time the Atlantic Highway was opened, had the rates for trucking been much lower than the railway was charging?

A Up until the highway was opened, there was no movement down there.

Q After that, when the highway opened, the truck rates were much lower, is that correct, than the RRCA rates?

A They started out lower, yes.

Q And then you reduced your rates either to the same price or in some instances to lower than the trucks, is that correct?

A That's right.

Q Is that correct?

A That's correct.

Q But the majority of the freight still continued to go via truck over the highway, is that correct?

A That's right.

Q What commodities were affected by the truck competition?

A Practically all dry cargo. We got some of it

it and they got some of it. But the pipeline imports of gasoline and diesel, diesel oil and fuel oil, in the majority came in through Puerto Barrios.

Q Did there come a time when the government built a refinery?

A I don't know that the government built one.

Q Was a refinery built to which the railroad was denied access?

A Where?

Q In Guatemala .

A In the country? In the city?

Q Yes.

A In the country -- I don't know as the government built one. But there was a refinery built in Puerto Barrios.

THE COURT: How did the crude come in? On vessels to Puerto Barrios?

THE WITNESS: Yes, sir. It came in on a pipeline.

THE COURT: From where? Mexico?

THE WITNESS: No. From Matias de Galvez, at the end.

THE COURT: All right.

Q Did there come a time, in or about 1963, when movement of products from refineries switched to tank truck,

which resulted in a decrease in revenue from rail tank car traffic to IRCA?

A I believe there was tank truck movement over the highway from that refinery, yes.

Q Now, in 1956 was there a substantial reduction in local freight and passenger revenues due to increased bus and truck competition on the Pacific Coast of Guatemala resulting from the completion of many miles of paved highway throughout that area?

A We lost freight to trucks on the Pacific, yes. And I suppose it was in that area, in the years, somewhere in the 50's, I don't know whether it was in 1956. I have no document here.

MR. KLINGSBERG: Please mark the IRCA Annual Report as Defendant's Exhibit 466 for identification, please, sir.

(Defendant's Exhibit 466 was marked for identification)

Q I show you Defendant's Exhibit 466 for identification. You recognize that, do you not, as the IRCA Annual Report for 1956?

A Yes.

Q Would you turn to page 2, where it states:

"Revenues from import traffic showed a further

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increase in 1956 over previous years, but there was a substantial reduction in local freight and passenger revenues due to increased truck and bus competition on the Pacific Coast of Guatemala resulting from the completion of many miles of paved highway throughout that area."

Does that refresh your recollection as to that fact?

A Yes, sir.

Q It doesn't say anything in there about losing traffic because of interference from banana trains, does it?

MR. BENDER: I object, your Honor. The statement speaks for itself as to what it says.

THE COURT: Yes.

MR. BENDER: Unless he is going to make it in evidence, especially, because he is referring to the whole document, under the circumstances.

THE COURT: Do you want to put it in evidence, Mr. Klingsberg?

MR. KLINGSBERG: Yes, your Honor.

MR. BENDER: No objection.

THE WITNESS: May I say something here?

MR. KLINGSBERG: The clerk wants to make the document.

(Defendant's Exhibit 466 for identification was received in evidence)

Q Is it also the fact, sir, as stated in the last sentence in that portion I just read from that "Steps were being taken in 1956 which include revision of local freight and passenger tariffs to meet the truck competition."?

A You added a word in there which doesn't appear here. That's the reason I'm checking it.

I think we are talking just about freight rates here, and you inserted the word "passenger," but insofar as this reading the way it does, it is true. I wrote it, so it must be -- I'll have to say it is true.

Q Now I show you Defendant's Exhibit 70 for identification and direct your attention to page 2. Do you recognize Defendant's Exhibit 70 as the IRCA Annual Report for 1957?

A Yes, sir.

MR. KLINGSBERG: I offer it in evidence, your Honor.

MR. BENDER: No objection.

(Defendant's Exhibit 70 for identification was received in evidence)

THE COURT: That is 1956, is it?

MR. KLINGSBERG: 1957 Annual Report, Defendant's

Exhibit 70.

Q Mr. Haase, is it a fact that in 1957 IRCA had to reduce tariffs in Guatemala on account of truck competition?

A I don't know, unless --

Q Look at the last two lines on page 2 of Defendant's Exhibit 70.

A What it says here is true, yes.

Q I show you Defendant's Exhibit 92 for identification, which is the IRCA 1958 Annual Report. Do you recognize Defendant's Exhibit 92 as the IRCA Annual Report for 1958?

A Yes, sir.

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Q Is it a fact that imports decreased between 1958 and 1967 by $1,747,387?

MR. BENDER: Your Honor, if that's actually in the annual report, I think we can save some time by agreeing that is the case.

THE COURT: I agree with you entirely. I don't understand why we are going through all this orally.

MR. KLINGSBERG: The witness testified this morning that the imports reductions were caused by interference from the banana cars which met the IRCA trains on the same track. We are impeaching that testimony by showing in every single annual report which this witness wrote the only reference to the reduction in imports and exports and the revenues and reduction of tariff is due to highway and truck competition.

THE COURT: Due to what?

MR. KLINGSBERG: Highway and truck competition.

THE COURT: Doesn't it speak for itself if it is in evidence?

MR. KLINGSBERG: All right.

I offer Defendant's Exhibit 92 in evidence.

MR. BENDER: No objection.

(Defendant's Exhibit 92 received in evidence.)

Q Mr. Haase, isn't it a fact that the $2.8 million dropped in freight imports from 1957 to 1962 of IRCA was principally due to loss of freight and rate reductions due to the highway competition to which you testified?

MR. BENDER: May I have that read again, please?

THE COURT: Yes.

(Question read.)

A I have no way of saying now whether the number is right or whether your statement is right, but our annual reports will cover that, or the International Railways Annual Report will cover it fully.

I have no documentation here.

Q You saw the annual reports from 1959 through 1962 did you not?

A I saw all of them.

Q And the annual reports contain explanations as to the reason that you and IRCA attributed to these various changes in revenue as illustrated in Exhibit 4, is that correct?

A I don't know if it's correct or not, but if it's in the reports, it's correct.

Q Mr. Haase, were there any instances in the late 1950's or early 1960's when there was militarization of the

railroad?

A There was at some time, but exactly what years, without any documentation, I couldn't say when it was.

Q What did militarization of the railroad involve?

A It usually involved sending down several Government officers and stating that we were militarized and under direction and control of the military, and so forth, but actually in the actual operation of the railroad, it meant nothing.

Q Were there times in the late 1950's and early 1960's when martial law was declared in Guatemala?

A Martial law was declared at various times in that period, but the dates I wouldn't be able to state here without any documentation.

Q Is it a fact that at times there was an appointment of a Government intervenor in regard to the running of the railroad?

A An intervenor was appointed.

Q Were any of these militarizations or appointments of intervenors political acts?

A I considered them so at that time.

Q What was the purpose of these political acts, according to your view at the time?

MR. BENDER: Could we talk about specific events,

your Honor?

THE COURT: Yes, I think so.

When was there a coup that overthrew the Government that was attributed to the CIA in the newspapers? When was that?

THE WITNESS: 1954.

Q Is it a fact, Mr. Haase, that the SMAF--the SMAF was the railroad union, is that correct?

A Yes.

Q --was one of the most powerful and best organized unions in Guatemala?

A That is true.

Q You have already testified that this was a strongly communist influenced union, is that correct?

A As I understood it, yes.

Q There are also various statements which you have written in the annual report concerning labor problems in the labor union. Those statements were accurate at the time you wrote them, were they not?

A I understood them to be, yes.

Q Is it a fact that in 1958 IRCA had a thousand to 2,000 excess workers?

A Yes, sir. More or less. I should say I haven't any documentation. I know in that area somewhere we had

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excess workers.

Q What was the reason that those workers were not immediately laid off?

A In many instances because we had no influence to pay them their severance pay and in several instances due to the objection of the labor syndicate.

However, negotiation with them usually brought about the results that we wanted, if we had the money to carry it out.

Q Was there a substantial labor problem in 1958?

A Without documentation, I couldn't answer that, sir. The annual reports cover that also whenever we had any trouble.

Q I show you Defendant's Exhibit 92 in evidence, a 1958 annual report, and ask if that refreshes your recollection as to the existence of a substantial labor dispute in 1958?

MR. BENDER: Your Honor, my only objection is if it's in the annual report why do we have to have it in the record?

THE COURT: I agree with you.

MR. KLINGSBERG: There is additional testimony, your Honor, which the witness gave about it in his deposition which I want to try to establish. The annual report

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indicates the existence but not all the details I want to bring out.

Q Does that refresh your recollection that there was a substantial labor dispute in 1958?

A I haven't quite finished.

Yes, there were labor negotiations in 1958 and the first part of 1959.

Q There was also a strike, was there not?

A Yes, sir.

Q And the union wanted, among other things, intervention in matters of railroad policy, didn't they?

A Let me check that.

Q Were you asked to resign as a result of differences over company policy?

A I was not.

Q Did you have a difference with Mr. Chalk over company policy or management just prior to your resignation?

A Over a period of time we disagreed on a couple of things, yes. But insofar as I know, that was -- that wasn't the pointed reason of my leaving the company.

Q What was the pointed reason of your leaving the company?

A As I think and believe, Mr. Chalk was the owner of the company and he wanted to be the president.

THE COURT: In that sense you were fire[illegible]weren't you? Because there couldn't be two presidents.

THE WITNESS: No. He wanted to be. No, I wasn't fired.

THE COURT: But if you didn't go, he wouldn't have been president.

THE WITNESS: Well, that is true.

But we came to an agreement on my leaving the

company.

THE COURT: Yes.

Q Did you ever say that you were unjustly discharged from the IRCA?

A That was according to Guatemala law. He wanted me to do certain things and come to the Staten, and I didn't want to come to the States. And according to the law of Guatemala, that is changing my conditions of work and it could be, under Guatemala law, attributed as indirect discharge.

MR. KLINGSBERG: I would like to mark Defendant's Exhibit 420 for identification, a telegram from Mr. Harold Haase dated May 9, 1965.

(Defendant's Exhibit 420 was marked for identification)

XXX

Q Can you identify Defendant's Exhibit 420 as a telegram which you sent dated May 9, 1965, copy thereof?

A This is a copy of the cable I sent to Mr. Chalk.

Q And did you state in that cable, and I quote, "I consider myself unjustly discharged."?

A I said that as the terminationof a lot of other things I said here. Exactly what I told His Honor the Judge. And the points I bring out are covered in Guatemala law.

Q Did you ever say that after you were discharged confusion reigned supreme at the IRCA operating offices in Guatem ?

A I did.

Q Was that a fact?

A As I saw it, yes.

Q Can you describe what was going on which led you to that statement?

A No one seemed to know who was running the company and no on e seemed to know what to do or when to do it.

Q Had Mr. Chalk prepared any of the personnel in the Guatemala office for your departure?

A Excuse me? I didn't hear that.

Q Had Mr. Chalk prepared any of the personnel in Guatemala to take over your duties on your departure?

A I don't understand as he did.

Q Had any steps been taken, to your knowledge, prior to your discharge to arrange an orderly transfer of authority?

A Not that I know of.

THE COURT: Are you still receiving compensation from IRCA?

THE WITNESS: No, sir.

THE COURT: Did you have a pension or anything?

THE WITNESS: No, sir. We worked out an arrangement where I took a lump sum payment.

[CROSS EXAMINATION BY MR. KLINGSBERG, CONT'D:]

Q Mr. Haase, when were you elected to the IRCA Board of Directors?

A In April 1959.

Q And how long did you serve in that capacity?

A Until I left the service, in June, I believe it was, 1965.

Q During the period that you were a director of the IRCA, were you controlled or dominated by the United Fruit Company?

MR. BENDER: I object to that, your Honor. That's a conclusion.

THE COURT: Overruled.

Q You may answer.

THE WITNESS: May I answer?

THE COURT: You may answer.

A I was operating the railroad under the instructions and orders of our Board of Directors and the Chairman of the Board of Directors.

THE COURT: Which board of directors?

THE WITNESS: The International Railway Company.

THE COURT: You said two things: Under our board of directors and--what was the rest of it? I didn't heart it.

Read it back.

(Answer read.)

THE COURT: The Chairman. I didn't hear that.

Q Mr. Haase, do you remember testifying in deposition in February 1971 in this case?

A Yes.

Q Were you asked this question and did you give this answer, page 16:

"Question. You were not dominated or controlled by any outside influence, as far as you know?

"Answer. No. As far as I know, I wasn't."

Were you asked that question and did you give that answer?

A Yes, sir.

Q And was that the truth when you gave it?

A As I saw it, yes.

MR. BENDER: Your Honor, may the prior question and answer be read in context?

THE COURT: I don't know. I don't have the book in front of me. Read it, if there is any question.

MR. BENDER: The prior question was:

"Question. Well, what was the fact in the time you were a director, as far as your testimony goes? Did you act independently in the interest, as you considered, of IRCA or were you dominated or controlled or influenced by somebody outside of IRCA?

"Answer. I wouldn't say anyone outside of IRCA. As president and chief executive and director, I naturally operated under instructions, or in line with the policy formed by the Board."

Q You were asked that question and gave that answer as well, did you not, that Mr. Bender read?

A Yes.

Q And that was accurate?

THE COURT: I picked this up at random; I don't want to interfere with the examination, but at page 15 there seems to be some reference to it as well.

MR. KLINGSBERG: That's right.

Q And were you asked this question, and did you give this answer:

"Question. And the Board -- at the top of the page, first half of the page which is listed under the description -- 'controlled and dominated the board,' I see your name, Mr. Haase, with some question marks.

"Answer. I put that on there with two question marks"--

THE COURT: You skipped something.

(Reading.)

"Question. What was the meaning of that?

"Answer. Well, I put that on there with two question marks because I didn't consider I was either controlled or dominated by the United Fruit Company, and when whoever it was said that it was controlled and dominated, I put the two question marks alongside my name."

Were you asked that question and did you give that answer?

THE WITNESS: I did.

Q And was it a fact at the time that you didn't consider that you were either controlled or dominated by the United Fruit Company?

A As I understood the matter, yes.

MR. BENDER: May I read the next question and answer, your Honor, so the record will be complete?

THE COURT: Yes.

MR. BENDER: " Q You considered you were wholly independent; did you?"

"A Well, not independent, but I didn't think that I was what those two words mean to me, controlled and dominated. I figured I could use some of my own judgment."

THE COURT: Then read the next two questions and answers.

MR. BENDER: I read that before, your Honor.

THE COURT: It has to be read again in context.

MR. BENDER: "Q Well, what was the fact in the time you were a director as far as your testimony goes? Did you act independently in the interest as you considered of IRCA or whether you dominated and controlled or influenced somebody outside of IRCA."

"A I wouldn't say anyone outside of IRCA. As president and chief executive officer and the director, I naturally operated under instructions or in line with the policy formed by the board."

"Q You were not dominated or controlled by any outside influence, as : as you know?"

"A No, as far as I know, I wasn't."

THE COURT: Now we have it rather complete. Thank you.

MR. BENDER: Your Honor, may we continue reading just to complete that part.

THE COURT: You are not reading it as an admission. You are reading it only to ask the witness whether it's true.

MR. BENDER: That's all right, your Honor, I have no further reading.

THE COURT: You didn't ask him the question.

BY MR. KLINGSBERG:

Q You heard the questions and answers Mr. Bender read?

A Yes, sir.

Q Were those answers truthful at the time you gave them?

A Yes.

Q One last reference. At the bottom of page 21.

"Q Was it true that your allegiance while director after president, was primarily to United Fruit?

"A No."

Were you asked that question and did you give that answer?

A I did.

Q And was that a truthful answer at the time?

A Yes, sir, as I saw it.

THE COURT: Why do you always add "at the time?" If it was truthful then it is truthful now.

Is it a truthful answer?

THE WITNESS: Yes, sir.

Q Mr. Haase, you were asked a couple of questions during your examination the other day by his Honor at page 86 of the transcript. The first question was by Mr. Bender:

"Q And the banana car, when were returned to the West Coast, were they generally loaded with imports or did they generally go back empty?"

"A Practically always empty."

"The Court: Let me ask you: Did your railroad have a rate schedule published, a published tariff or anything like that?"

"The witness: We did, yes, sir."

"The Court: What did that tariff show for everybody who wanted to transport goods from the East Coast to the West Coast? Did you have a rate for each type of car?"

"The witness: Yes, sir."

"The Court: Was this a different rate from

the one you gave CAG?"

"The witness: Yes, sir."

"The Court: What was the differential?"

"The Witness: The differential was two or three times greater than what we charged the Compania Agricola."

"The Court: How long did that differential last, until what year?"

"The Witness: Until they left the country, until they got out of the banana business in Tiquisate."

"The Court: After the Ripley decision there was no change in that respect?"

"The Witness: I don't believe there was."

I would like to show you the judgment in the Ripley case, paragraph 8E. I ask if that does not refresh your recollection that there was a change ordered in import rates in the Ripley case?

MR. BENDER: Your Honor, may I just inject this? There is something here which we conceded on page 89 shortly after that, that the public tariff rates were in fact lowered. At the top of page 89 I said, pursuant to your Honor's question -- the Court asked this question at the bottom of Page 88:

"But the differential was maintained in accord-

ance with the Ripley judgment, is that correct? Any argument about that, if there is, I want to know?"

"Mr. Bender : The ten percent continued to increase and if the IRCA for example lowered its tariff from $350 on any particular commodity, then of course that spread was narrowed very drastically."

THE COURT: You said that?

MR. BENDER: Yes, your Honor. There is no question, your Honor, that as the tariffs were lowered then of course the payments that were being made by CAG came up to the public tariff rate that much faster and this varied on all the commodities. We concede that to be the case. It would be just a question of determining what was the existing public tariff rate and what CAG was then paying to determine whether or not there was any differential as to particular commodities. We concede that the tariff rate in some instances by the start of the damage period in this situation had already been -- that there was no differential on some items as of 1961. But this varied from commodity to commodity. There were many items that were imported, your Honor.

THE COURT: That leaves me completely in the dark, doesn't it?

MR. BENDER: At this stage of the hearing, yes,

your Honor.

MR. KLINGSBERG: If Mr. Bender will consent to striking all the witness' testimony on whether import tariffs were higher or lower, because we don't have the tariffs, then I don't have to pursue it.

THE COURT: I would think that would be desirable because it is obvious that Mr. Haase misspoke himself as to the effect of the Kipley judgment, which is natural. So many years have gone by.

MR. BENDER: Not in this respect, your Honor, if I may just say: one of the things we are relying upon is that there was, before the payment was made in 1961, that there continued to be on imports a discriminatory rate structure in that up to March of 1961 United was paying $100 a car, for example, on a 40,000 pound car.

THE COURT: You are testifying now. All I am saying is that Mr. Haase apparently from memory is not qualified to testify about it. You may introduce it. I am not saying it is not relevant. But he has shown he doesn't really know, he doesn't remember, so I will strike it because it is obviously not within his memory. You may put it in, do it through some other witness.

Let's agree on what we have stricken because I don't have the volume before me. It's upstairs. What

pages, Mr. Klingsberg?

MR. KLINGSBERG: That was at page 86 starting with the Court's question on line 20 up through page 87 at line 16.

THE COURT: All right, that's stricken subject to the matter being proved otherwise by the plaintiff.

Q Mr. Haase, you were asked this question at page 89 of the transcript.

"Q Now, on wharfage in 1960 the contracts show that CAG on its imports into Guatemala paid $2 a ton on materials and was there a published tariff rate that was higher for Standard Fruit Company in 1960?"

"A Yes, sir."

Now, we reviewed yesterday, you recall, all the references in the annual reports to reductions in rates which IRCA had to make in order to meet the competition at the wharf in Matias de Galvez and in order to meet the truck competition, do you recall that?

A Yes.

Q Could you also have been mistaken in your recollection just as you were on the changes in the import tariff and the changes in the wharfage tariff?

A I don't believe so.

Q Was there a different wharfage tariff for different kinds of material?

A As I recall, yes.

Q How many different wharfage tariffs would there have been, one for each type of commodity?

A I don't believe so. There were various wharfage

tariffs, but generally they covered a group of items.

Q And did they vary in amount?

A I don't think so.

THE COURT: What was this wharfage tariff? Was that a form of demurrage or just an unloading charge?

THE WITNESS: It was a charge for the use of the wharfage facilities.

THE COURT: Which is really an unloading charge?

THE WITNESS: The could be termed that, yes.

Did I understand you correctly to say there was a separate wharfage tariff for groups of commodities imported but that each separate tariff for each group was exactly the same dollar amount, is that your testimony?

A No. As I recall it, the tariffs would carry certain -- a certain number of items and that would have a certain tariff. There may have been some differences between commodities but Iam not too sure right now excepting that the wharfage for the United Fruit Company and the Compania Agricola was less than the general wharfage tariff.

THE COURT: Both for imports and exports, was it?

THE WITNESS: For imports especially. Insofar as bananas were concerned, the Compania Agricola and the United Fruit Company had no wharfage charge because it wasn't

set up in the agreements or in the contracts that we had with those companies.

Q Was the Compania Agricola's wharfage import charge different for different categories of merchandise just as the published tariff was different for different categories of merchandise?

MR. BENDER: Mr. Klingsberg, you used the term "merchandise" in this particular question. Did you intend it to be different than the term "materials" in the previous questions?

MR. KLINGSBERG: Materials, merchandise, commodities, it doesn't make any difference.

A The import duty for the United Fruit Company and the Compania Agricola, as I recall them, was a certain figure and that was due to their materials and supplies and merchandise being cleared in the customs house at Puerto Barrios and then forwarded on to their designation at Bananera for the United Fruit Company or the Compania Agricola on the West Coast or to the United Fruit Company merchandise department which was located -- the principal one was located in Puerto Barrios.

Q You haven't answered my question. My question is, you have testified that with regard to the published tariff import wharfage, you had different amounts for

different groups of commodities.

Was the same thing true in regard to the CAG wharfage for imports?

MR. BENDER: Your Honor, I am going to object to that as to CAG;s charges because they are all covered by the contracts and they are all in evidence. That's the best evidence of what the charges were.

THE COURT: Let me hear the question again. I didn't quite understand its tenor.

(Question read)

THE COURT: Make another question.

MR. KLINGSBERG: Mr. Bender makes the best evidence objection. I am perfectly happy to accept the best evidence rule here and to have a ruling that the best evidence is what's in the contracts and what's in the published tariffs. If we have the published tariffs we don't have to test this witness' recollection.

THE COURT: I agree with that. I couldn't agree with you more.

THE COURT: All right. I am assuming for the moment that you have made a representation to the Court that you will be able to prove the loss or destruction of the tariffs so as to make admissible now the testimony of Mr. Haase with respect to his recollection of the tariffs. Is that correct?

MR. BENDER: That's correct, your Honor.

THE COURT: Now I am telling you that you have to have a pretty good, accurate memory or it's meaningless on secondary evidence of this kind done orally.

MR. BENDER: I understand, your Honor.

THE COURT: We may be wasting a lot of time on this if you can't pin it down. I don't know whether you can or not.

MR. BENDER: Your Honor, we are attempting to exhaust other means of getting the same information.

THE COURT: I think you are wasting my time here, I must say, with Mr. Haase. I can't possible remember what the differentials were or the tariffs or anything. It is a very poor way of proving your case. I suppose that's one of the troubles with these old cases. That is why we have statutes of limitations and stuff like that.

MR. KLINGSBERG: I am sorry to take up your Honor's time but we have this testimony on the record that there is discrimination and I have to deal with it.

THE COURT: I understand that. You are entitled to cross-examination. I am addressing my remarks more to Mr. Bender as to what he should try to look for and prove.

MR. BENDER: Your Honor, we are also going to make a more thorough search -- we have already searched the records over in Jersey City. We will make a more thorough search over in Jersey City -- it is really New York now -- of these records in an attempt to find tariffs.

THE COURT: All right. I am not making any

anticipatory rulings but I like to advise counsel when I think the evidence is inadequate so if they can find something better they will.

MR. BENDER: Thank you very much, your Honor.

BY MR. KLINGSBERG:

Q Mr. Haase, was the wharfage charge for imports that CAG paid contained in the 1948 contracts?

A I believe it was, yes.

Q So that that charge did not go up or down after 1048, did it?

A I don't believe it did.

Q But the wharfage charges of IRCA contained in their published tariff relating to imports were reduced from time to time in order to meet the Matías de Galvez competitio and for all the reasons we reviewed yesterday, is that correct?

A Such is my recollection.

Q Mr. Haase, would you look at Defendant's Exhibit 101 in evidence which consists of the original document

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which is a poor reproduction from the IRCA files and and a retyped version which we have agreed upon with Mr. Bender.

Can you tell us who is CJG who wrote this memo to you?

A CJG was Charles John Gregg, who was freight and passenger agent of the International Railways of Central America at that time.

Q Do you know who this initial is?

A The initials are A.V.C., Albert V. Cooper, who at that --

Q This is 1959; April, 1959.

A Mr. Cooper was at that time a vice-president of the railroad generally in charge of tariffs and port operations.

Q And he says here "The rates for the transportation of most items of import cargo from Puerto Barrios to Guatemala have been reduced at different times during the past year but for several reasons they are higher than the rates for local cargo."

You have no reason to challenge that conclusion, do you?

A No.

Q And CJG says: "The carload rates now being paid

on solid cars for CAG from Barrios to Tiqui ate do not appear to be out of line if it is considered that the delay and expense of individual weighing, rating and checking is avoided."

You have no reason to challenge that statement, do you?

A No, sir.

Q Mr. Haase, do you recall giving testimony in regard to the fact that the United Fruit and CAG could use their own labor at the pier? Do you remember that?

A Yes, sir.

Q And you also gave testimony in regard to the fact that United Fruit and CAG did not have to pay wharfage charges on exports; do you remember that?

A Exports of bananas, I said.

Q Yes.

A Yes, sir.

THE COURT: Excuse me. Did they export other things than bananas, United Fruit, from Guatemala?

THE WITNESS: The things that they produced, your Honor -- I don't recall that they exported anything, but they did reexport, later on, materials and machinery from Guatemala that they had brought in there for the Guatemala Division. They exported them or reexported them, sent them to other divisions in other countries.

THE COURT: But I meant they didn't export coffee or things of that kind.

THE WITNESS: No, your Honor.

MR. BENDER: Your Honor, may I make a concession on the merchandise? In Reply it was determined that the charge by United and CAG on merchandise after 1951 of

$5 a ton was the same as the general public tariff. So that after 1951 the plaintiffs --

THE COURT: '51 or '61?

MR. BENDER: After 1951, your Honor, on merchandise as distinguished from aterials, and that's why I was drawing the distinction before, your Honor --

THE COURT: Yes.

MR. BENDER: We do not claim on merchandise that United was paying anything but the public tariff for wharfage on merchandise imported into the country of Guatemala. That is United and CAG both.

MR. HANDLER: Your Honor, I am at a loss to understand why these concessions were not made at the time the witness was asked categorical questions. Whenever Mr. Klingsberg is about to show that the witness misstated the facts, we get an interruption, and I don't think you can have an effective cross examination that way.

THE COURT: Write it down and then you will get it.

MR. HANDLER: There is a matter of credibility involved here.

Q Now, Mr. Haase, after the testimony which I read to you earlier in response to the Court's request, you were asked, page 71:

"Question. Now, I previously asked you that question about 1960. Now, did the same pattern continue in 1961?

"Answer. It continued. There was no change."

Now, in 1960, what was the peak month?

A I don't recall exactly. I have no documentation. But I should imagine it would probably be around May or June.

THE COURT: Peak for what? Traffic?

THE WITNESS: Peak of banana movement, yes, your Honor.

MR. KLINGSBERG: If your Honor please, there was one exhibit where we had a slight discrepancy on figures.

THE COURT: I can't hear you.

MR. KLINGSBERG: There was one exhibit where Mr. Bender and I disagreed slightly on the figures, and we couldn't agree on it.

I would like to mark it now and use it to refresh the witness' recollection, subject to connection and working out the detailed figures.

We have the regular business forms from which this was made in court. This is 468, Tiquisate stems shipped by month, 1960 and 1961.

THE COURT: Mark it for identification.

(Defendant's Exhibit 468 was marked for identification.)

Q Mr. Haase, I show you Defendant's Exhibit 468 for identification, which we prepared from our form 840's. Does that refresh your recollection that the peak in 1960 was in March, April and May?

A Yes, sir, it does.

Q And isn't it a fact that in March and the begin-

ning of April IRCA was able to move all the CAG and the Standard West Coast bananas and United Fruits--East Coast bananas, without any undue delays?

A I don't know what you mean by delay. We moved it. And at this late date, right at the moment I can't think of any other details there might have been. That might have been the period when they had shipments bunched up that affected our supply of cars and our motive power was exhausted for some periods of 24, 48, 60 hours or something like that.

But without anything to refresh my memory, sir, I couldn't--

THE COURT: Let me ask you, in connection with that, if you had a situation where the Standard shipments were held up, let's say, for 48 hours, did the railroad lose any money, any revenue, by that fact, or was it only Standard that lost by it?

THE WITNESS: The railroad usually didn't lose. I don't know of any instance when the cut itself was cancelled. That come under an answer I made before, where I said we would try and adjust it, maybe we could set it up, maybe we could set it back, but so that they could move it.

I don't recall any instance where Standard lost

the shipment.

THE COURT: There was nothing like a reverse demurrage charge or something of that kind?

THE WITNESS: No, your Honor.

[THE COURT: * * *]

Did you have any complaints from Standard, with respect to deferred shipments, where they claimed that if you had got out the trains in time the bananas would not have spoiled?

THE WITNESS: I don't remember any claim, right at the present time, to that effect, your Honor.

Q You don't know of any written complaints from

Standard in that regard, do you?

A Standard generally didn't make their complaints in writing.

I remember, when they would come up, they would mention a little delay here or some delay here, and something there, and we would attempt to correct whatever it was that happened.

Q And CAG sometimes had some complaints about little delays here and there as well, didn't they?

A Little delays, yes. But generally, no, insofar as the delays were concerned. We took care of them pretty well.

Q As a matter of fact, this whole procedure was coordinated in regard to the key point, which was getting the bananas to the port when the ship came in, wasn't it?

A Generally, yes.

Q And both Standard and CAG advised you well in advance when the ship was coming in, didn't they?

A Yes.

Q And you don't know of any instance in 1960 or '61, do you, when Standard missed a boat with a shipment?

A Missed a boat, no. Delay, perhaps, yes.

Q Okay.

Now, getting back to Defendant's Exhibit 467, that is a letter that you wrote to Mr. McGovern, dated April 13, 1960, isn't it? (Handing)

A It is a letter I wrote, yes.

Q You stated in this letter, did you not, "So far, we have been able to move all of the Compania Agricola and Standard West Coast bananas and the Fruit Company's East Coast bananas without undue delays."

That was a fact, was it not?

A I stated it and it was a fact.

THE COURT: What was the date of it?

MR. KLINGSBERG: April 13.

THE COURT: What year?

MR. KLINGSBERG: 1960.

Q And that referred to the March shipments, where there were 619 CAG stems, and the first part of April, where they had 809 stems, is that right?

A Yes, sir. This letter was written before the 809 cars were moved.

Q Right. And it also says, you wrote in Defendant's

Exhibit 467:

"Fortunately from a car standpoint, but unfortunately from a revenue standpoint, the Standard Fruit Company cannot schedule any cuts between April 12 and 18, evidently to bring up to grade."

That was an effect, wasn't it?

A Yes.

Q To bring up to grade, what does that mean?

A It means that perhaps due to cold weather, perhaps due to replanting and so forth, the period wasn't right for the bananas to be completely ripe and ready for shipment.

So in cases of this kind, when they brought the grade up, as any company would, instead of--if they made an estimate--we'll say, a hypothetical case, they were going to ship a hundred thousand stems this week, if they got cold weather, the bananas wouldn't mature, and so they would cut down their shipments; they would wait a little bit later and they had matured.

Q Now, in 1961, assuming our figures are accurate, in March you had approximately the same amount of stems shipped in 1961 as 1960, and specifically 619 stems in 1960 and 634 stems in 1961.

Do you see that?

A Yes, sir.

Q Does that refresh your recollection that the March shipments were about the same in those two years?

A Yes, sir.

MR. LEWITTES: That's in thousands, Mr. Klingsberg?

MR. KLINGSBERG: In thousands, yes. I am sorry.

Q Does this document also refresh your recollection that in April and May the shipments in 1961 were substantially less than in 1960?

A According to this report, yes, sir.

Q And, as a matter of fact, 1960 was an unusual year for production, wasn't it?

A Well, I don't know that it was unusual. I believe from memory we shipped a few more stems that year than we did the year before. Maybe I should say quite a few instead of a few.

Q You also stated, didn't you, in Defendant's Exhibit 467, in regard to the 1960:

"These shipments do not create much of a problem outside of pulling an increased number of cars out of the fruit carpool for handling the bananas from all three companies."

Was that a fact?

A Whatever I said here was a fact.

Q And your conclusion was:

"Every one here is giving the required attention to these heavy fruit movements and everything possibl will be done to move all of the bananas with the least possible delay, if any."

This was your policy, wasn't it?

A Oh, yes. Generally, yes.

Q You testified, at transcript 53, in regard to the 100 cars, "they were sent over perhaps six or eight months before that and now due to an increase in movement reported, we considered we should have them back."

Now, as indicated right on the face of PX 112, the cars were sent to Panama in April 1956, weren't they?

A As of this date, yes.

Q You have no reason to challenge that, do you?

A No, sir.

Q Now, you knew, did you not, that CAG was obligated under the terms of its contract with IRCA to offer IRCA the opportunity to purchase the cars before removing them?

A I believe so, yes.

Q And that offer was in fact made, wasn't it?

A For these cars in 1956?

Q Yes, sir. It doesn't say so in this document. I am just asking you.

A Would you mind repeating it, please?

A I say, pursuant to the terms of the contract before the cars were removed from the country, IRCA was offered the opportunity to buy them and IRCA said it didn't want to buy them in 1956, isn't that what happened?

A I don't know as it did.

Q You don't know anything about that?

A May I refresh my memory? Do you have anything to refresh my memory on it? That has been quite a while ago.

As I recall this thing just on the face of it now, the cars belonged to the United Fruit Company, and they wanted them and they said they wanted them, so we gave them to them. But there might be some special circumstance about which I perhaps don't remember.

Q It is also a fact when the cars were removed from Guatemala, special brakes were used to make the passage up and down the mountains were removed from these cars.

MR. BENDER: Your Honor, I object to the word

"also."

THE COURT: Overruled.

A Yes.

Those cars that went on to Panama, I believe it was, they removed the air brake equipment from them in Bananera.

Q That was an expensive proposition, wasn't it?

A Well, it cost something.

Q It would have been expensive to put them back?

A A little more expensive to put them back than to remove them, yes.

Q The air brakes were purchased by IRCA and used as spares on other fruit cars in Guatemala, were they not?

A As I recall it, yes.

Q By the time you were asked for the return of the cars in 1959, you were certain that any of this air brake equipment remained available to be put back or had it all be used as spares on other cars?

A Some had been used, that I know, but whether all of it had been used, I couldn't say.

Q Do you remember a dispute which you had running at this time with some of the CAG officials about whether it would be more expensive to re-equip the cars with the air brakes or whether it would be cheaper, instead of

having more cars, send deadhead crews with empty cars out to the plantations in Tiquisate.

MR. BENDER: Objection. It assumes there was a dispute, your Honor.

THE COURT: Overruled.

A I don't remember having a dispute with anyone down there.

Q Do you remember a discussion of that subject?

A We talked about it but no dispute.

Q What was your position?

A On what?

Q On that subject?

A On what subject?

Q The subject I just mentioned.

A Could you pinpoint it a little closer, please, sir?

Q Yes, about the relative costs of your running deadhead crews with empty cars as compared with the cost of getting these cars from Panama, paying for the transportation and all these other things.

A Well, that perhaps has more than one angle to it.

If we were going to get the cars back--this is hypothetical--I suppose that the United Fruit Company

would have made any expenditures and done any work necessary to return them to us in the same condition that we returned them to them.

So, insofar as the expense to IRCA is concerned, with regard to deadheading crews because of this, I remember something slightly to that extent, but I don't recall at all--maybe you can refresh my memory with something in writing--but any such deadhead expense of train crews would have been for the account of the International Railways.

Q What does that mean, deadheading crews?

A That's sending crews out without working to a certain destination where they were to take over their train and operate it. They weren't working. That's called deadhead, riding a cushion.

Q You testified, sir, at the bottom of page 79, and the top of page 80:

"Question. Mr. Haase, were there any shippers that were considered to be independents in 1961 that you now recall other than Standard Fruit Company?

"Answer. No, I don't recall any.

"Question. How about in 1960, do you recall any?

"Answer. I believe there were some then, yes."

I show you Plaintiff's Exhibit 1396 for identification, and that's the document which you identified as being written by Mr. Brennan in 1964. Do you remember that?

I ask if that refreshes your recollection as to the number of cars which were shipped by exporters other than Standard Fruit Company in the year 1960?

THE COURT: What number is that, Mr. Klingsberg?

MR.KLINGSBERG: 1396.

THE COURT: Do you have that?

MR. KLINGSBERG: A plaintiff's exhibit for identification.

A This is not a very clear report, but from what I can see here, where it says "other exporters," I don't suppose that includes Standard because I don't see--

THE COURT: Doesn't include what? I don't hear you.

THE WITNESS: It doesn't include Standard. Apparently up on the top there is something that says Standard, and where it says "other exporters" it would be independents and according to this report, there were a few cars shipped in 1960 and 1962, but very few.

Q How many in '62?

A 1962, as I see, there are three cars.

Q And 1960?

A Thirty.

Q And 1959?

A Eleven cars.

Q Anything between 1955 and 1959?

A This report doesn't so indicate it.

Q 1954?

A Three cars.

Q Do you know the names of the other exporters who shipped the three cars in 1962?

A At this time, no, sir.

Q Do you know the names of the exporters who shipped the thirty cars in 1960?

A No, sir. Same reply to 1962.

Q Do you know whether those shipments came from some banana farmer who had an associate producer arrangement with CAG or United or Standard?

A I don't know what arrangements they had, but if they were other exporters--

Q Don't speculate. Just tell us if you know.

A Well, I need to explain to give you an answer as best I see it.

O All right.

A If it was purchased fruit by the Compania Agricola it would be under Compania Agricola's shipments. If it was purchased and handled by Standard it would be included in theirs. So according to this report, these were shippers other than Compania Agricola or Standard.

O Do you know if they were banana farmers who had arrangements with Compania Agricola or Standard or United who had a few extra bananas left over?

A No, that I couldn't say, sir.

O Do you know if these were coffee growers that used banana trees as a side line to shade the coffee?

A I don't know. I suspect some of them were.

O Do you know whether these carloads were exported to the United States or to Europe?

A I am guessing --

O Don't guess. I am asking you if you know as a matter of fact. You are testifying under oath.

A To the best of my knowledge, they were shipped to the States.

O But you don't actually know, do you?

A I don't know.

O There were many bananas shipped from Guatemala to Europe, weren't there?

A Insofar as I know, not by the independents, not those small shippers.

O But you have no actual knowldge of where these particular shipments went in those years that are listed?

A Destination, exact destination, no, sir.

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Q It is a fact,is it not, that even before Agricola closed its plantation, trucks were moving most of the cotto which was grown in that area?

A That is true, as I recollect.

Q And the cotton growers preferred to ship by truck because it was cheaper?

A And personal interest which they had in the cotton plantation as well as in the ownership of the trucks and trucking companies.

Q It is also a fact, is it not, that much of the cotton grown in Guatemala was exported to Japan?

A I understand it was.

Q And to the extent that the cotton was grown on the west coast and exported to Japan, a great deal of that was through the west coast ports of Guatemala, did it not?

A Yes, sir.

Q Mr. Haase, you testified at transcript page 121, bottom, line 21.

"Q In the late 1950's, Mr. Haase, did the railroad investigate the possibility of purchasing diesel equipment?

"A Yes.

"Q And did it carry out any plans in the late '50s for the acquisition of diesel equipment for the Guatemala division?

"A Yes, sir.

"Q What did it do?

"A We made an application to the Development Loan Fund, the Export-Import Ban and to AID.

"Q Was that just restricted to the late '50s or did they carry forward into the '60s?

"A I believe that carried into the '60s.

"Q And was IRCA turned down by the Export-Import Bank?

"A Yes, by all three of them."

Did you handle any of these negotiations yourself?

A Yes, sir.

Q Isn't it a fact that Development Loan Fund is part of AID?

A I think I said that, but I am not sure that it is. I went to the Development Loan Fund called the DLF and I went

to the Import-Export Bank, but I did not go to AID as such.

O But you know that the Development Loan Fund is in fact connected with AID?

A It might be, but I understand that Mr. Chalk went to AID but didn't go to DLF, the Development Loan Fund. So he evidently went to another branch.

O You said there was a turndown by all three of them. Do you know what happened in connection with Mr. Cahlk's negotiations with AID?

A No, sir. He made a report I believe it was to a stockholders' meeting, which is a matter of record and documents here, that he was very unhappy about AID dragging their feet and not coming through with the loan, etc., that's all I know about it.

O Do you know in point of fact he withdrew his application from AID before they ruled on it?

A No, sir, I don't know whether he withdrew it or they turned him down later than that.

O You don't know one way or another?

A No, but he told me he wasn't going to get it.

Q Then you would correct your testimony about a turndown by all three of them?

MR. BENDER: I object, your Honor.

THE COURT: Overruled.

A He told me that we weren't going to get them.

O But you don't know in fact whether he withdrew it or whether AID ruled on it?

A No. I correct it to that extent.

O Did you make certain petitions to the Guatemalan government in order to get their approval for the AID loan?

A Yes, sir.

O I would like to show you DX 340, which has been marked in evidence, which contains a newspaper article. What newspaper is that?

A La Prensa.

O Is it a fact in or about the middle of 1963 you were negotiating with the Guatemalan government in order to get approval from them in order to acquire 50 diesel locomotives?

A Yes, sir. It is around that area. '63 I believe it was, yes, we were doing it.

O And you filed a petition with the government, did you not?

A Yes, sir.

O And the government rejected your petition, did it not?

A There are two angles to that. One was a guarantee and the other was approval, simple approval. The simple

approval we got. We didn't get the guarantee, as I recall it.

Q Do you know what this refers to where it says: "The City Council unanimously resolved to refuse IRCA's presumption"?

It might be a mistranslation.

A This is a translation and it is not a good one.

Q Do you read Spanish?

A I do.

Q In connection with your petition, did you ask for certain changes in your labor agreement which are reflected in this exhibit?

A We asked for certain consideration with regard to pensions and severance, I believe. I don't remember the details but we asked for some certain considerations with labor.

Q Was that granted or rejected?

A Inasmuch as we didn't get the guarantee, the rest naturally fell by the wayside.

Q You asked for aboliton of the reduction of 25 per cent in the wharfage fees and imports to Matias de Galvez, did you not?

A I believe we did, yes.

Q Is that part of what fell by the wayside or was that rejected?

A Yes, sir.

Q And did you also ask the Guatemalan government to authorize the railroad connection between the principal lines and the refinery in Guatemala?

A I might have included it in that. I couldn't say for sure now.

Q Did you also ask the Guatemalan government that where possible roads that are projected should be laid -- that road should not be parallel to the railroad tracks?

A I believe we brought that up, yes.

Q Did that fall by the wayside?

A Well, there was no answer to it.

Q This matter came up again in 1964, did it not?

I show you the newspaper article, Defendant's Exhibit 392. What newspaper is that?

A Imparcial.

Q This contains translations of two articles and the first one refers to the fact that director Haase hopes that finally the negotiation will reach accord.

Does that refresh your recollection that in 1964 this matter came up again?

A I believe it did, yes.

Q It is a fact that you petitioned this time in regard to obtaining 28 diesel locomotives?

A Yes, sir, I believe that is a correct number.

Q And in your petition, did you explain all the advantages to the railroad and all of the advantages to Guatemala that you thought it would have if the government acted favorably on your petition?

A Yes, sir, and it was approved by all, I understand, with the exception of one minister.

Q And that was the Minister of Economics, is that correct?

A I believe it was the Minister of Economics to whom the petition had to go for approval of the guarantee, but I believe it was the representative of the Department of Commerce who was in on this group who had to decide whether to approve it or not, and he was the only one, I think. I don't think at this moment it was the Minister of Economics.

Q Did the Minister of Economics announce the rejection of the petition on the ground that all of his group had not approved it?

A I believe so. He was the spokesman.

Q Do you remember the grounds of the rejection of the petition by the Minister of Economics?

A As I recall it, one of the principal reasons for denying it on the part of this Commerce Department repre-

sentative was that we were going to make so much money that we would have to buy dollar exchange and send it out of the country and he considered that would be against the economy of Guatemala.

However, that was opposed by many people in the country, including the manager of Imparcial who wrote this article.

Q Do you remember the Minister of Economics announcing in words or substance that the investment which the IRCA proposes will cause a decapitalization in the national economy inasmuch as the company will manage a considerable reduction in cost of operation which will be translated into an increase in profits, increasing the amount of holdings to export?

A He said it in different words, but he and I have said the same thing.

Q Can you tell us, sir, what the first two tele-

grams, which you said do refresh your recollection, refresh your recollection as to?

A There are two points here, sir. The first point and that point is covered by the first two cables, and that is the importation--the movement of diesel oil from the Port of San Jose, not Concepcion, to Tiquisate, and they wanted to know whether they could build a diesel oil deposit tank and buy a piece of land in San Jose.

The other point which only arises in the third one, the third cable, which also covers the first point, whether bringing it into San Jose, Mr. Pollan wanted a certain rate from San Jose.

Mr. Armstrong, the then president of the railroad, said yes. So he comes back in the third one and says, "Fine."

He sent this one to Heyl, who was the manager of the Fruit Company at Bananera, and told him that he had had this crossing of cables and that they had reached an arrangement and he was happy about it and put it into effect, words to that effect, and then he brings up the Port of Concepcion, it would make it unnecessary, our installation at Concepcion. That is the only time it was brought up.

Q I take it that you personally did not participate

in the negotiation of these rates and contracts on the fuel oil?

A I did not.

Q In regard to your testimony as to whether the published tariff was higher or lower in certain later years than the rate which CAG was paying on diesel fuel oil and taking into account all the rate reductions you were telling us about yesterday, you would concede, would you not, we ought to check the tariff rather than rely on your recollection?

MR. BENDER: I object, your Honor. That calls for a conclusion.

THE COURT: Overruled.

A I remember that there was a considerable difference in the rates charged to Compania Agricola for their diesel oil from San Jose to Tiquisate and from Puerto Barrios to Tiquisate and from Puerto Barrios to Tiquisate as compared to the published tariff.

Now, just exactly what the published tariff was, I can't give you the figures, but I do know that it was considerably more.

Q You can't give us the figures for any particular year, can you?

A No, sir, I can't. I know they were higher.

Q And you can't say for certain, can you, that it was actually more or less in every year that you were with the company in light of all the rate reductions that you were telling us about yesterday?

A It was for many years, but when I left, I couldn't say right now.

THE COURT: But it is all very vague to me, Mr. Haase. You said before, as I understood you, that there

never was a delay of more than 48 hours, that Standard never missed a ship, that as far as you know there had never been any damage to Standard. Was I wrong when I heard that testimony?

THE WITNESS: No, sir. This was very true. But what we are explaining now is what equipment was used.

THE COURT: I understand. But I'm trying to determine the relevance of it. But the bottom line, the nitty gritty, as we say -- and if I am wrong correct me, because this may become important -- is that as far as you know there was no damage to Standard, the competitor of United, by virtue of your railroad practices in IRCA. Is that a correct statement?

A That is true. If there was any damage, it was very little.

THE COURT: Let me turn it around and ask you, was there any damage to IRCA by virtue of this preference that you gave?

THE WITNESS: No, sir.

THE COURT: And was there ever a time when you didn't have enough cars so that you lost the differential because you didn't have enough cars?

THE WITNESS: We never, as I recall it, really lost a shipment. We had to delay it sometimes.

RICHARD RONDANINA, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BENDER:

Q Mr. Rondanina, what is your present employment?

A Currently I'm employed as an accountant with Loeb Rhoades & Co.

THE COURT: You had better speak louder.

Q And on a part time basis are you also employed by International Railways of Central America?

A Yes, I am.

Q What is your position on a part time basis with IRCA?

A I do part time accounting for them.

Q And prior to your present full employment, were you employed by IRCA?

A Yes, I was.

Q In what capacity?

A When I left their employ, I was treasurer of the company.

Q And when was that?

A I left in April of 1971.

Q And you were treasurer of IRCA until prior to

April of '71 for what period of time? Commencing as of what date?

A I think it was approximately 1966 or '67. I don't know the exact date that I was appointed as treasurer.

O And before your appointment as treasurer, what was your position with IRCA?

A I was an assistant treasurer.

O And that commenced as of what date?

A That commenced in October of 1962.

O And was that your first employment with IRCA, October of '62?

A No. April 1st of 1962 I was first employed by the company.

O In what capacity?

A No specific capacity. I was just there to replace the assistant treasurer, who did retire in October.

O Now, before April of '62, what was your employment?

A I was employed by Peat Marwick Mitchell & Company, certified public accounting outfit.

O And were they the accountants for IRCA?

A Yes, they were.

O And while you were at Peat Marwick, did you work on the IRCA account?

A Yes. I worked on the IRCA account in connection

with the Ripley trial.

Q And how long were you at Peat Marwick?

A I was employed with Peat Marwick from September 1953 until April 1962.

Q And your capacity --

THE COURT: What was the beginning date?

THE WITNESS: September 1953.

THE COURT: You worked on IRCA from September '53?

THE WITNESS: No. I was employed with them.

THE COURT: When did you start working on IRCA matte

THE WITNESS: I don't know the exact date, but that is in connection with auditing damages that were awarded in connection with the Ripley suit. At various times I was in and out.

Q And while employed at Peat Marwick, were you an accountant?

A Yes, I was.

Q Are you a certified public accountant?

A No, I'm not certified.

[RECROSS EXAMINATION BY MR. KLINGSBERG:]

Q What is Mr. Yeager's position, if any?

A At this point he has no position with the company.

O When was the last time he held a position?

A He held a position up to the point that Mr. Weber was elected, which was in November of 1973.

O And what was Mr. Yeager's position at that time?

A He was president and chairman of the board.

O And how long had Mr. Yeager held that position?

A Well, from the point -- from the time that the railroad was sold by -- Transcaribbean Airways sold its interests in the railroad, which was, I don't recall exactly, probably '66, '67, somewhere in there.

O Can you tell us the reason that Mr. Yeager resigned his position just prior to going to trial in the case?

A I don't know. Probably health reasons. He didn't give any specific reasons.

O Did Mr. Yeager own shares in the IRCA?

A Yes.

O And do you know whether there was any corporation which owned shares of IRCA in which Mr. Yeager had an interest?

A No. I don't know.

MR. KLINGSBERG: Thank you.

REDIRECT EXAMINATION

BY MR. BENDER:

Q Isn't it a fact, Mr. Rondanina, that Louis Yeager is still a director today?

A Yes, he is.

Q So you misspoke yourself before when you said he was not, is that right? You didn't intend --

THE COURT: Never mind. I understand it. He is not chairman, he is not president, but he is a director.

MR. BENDER: He is a director, your Honor.

M O R T I M E R C U R E, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BENDER:

Q Mr. Cure, where do you now reside?

A In Weston, West Virginia.

Q What is the address, please?

THE COURT: He stated it. Weston, West Virginia.

Q Mr. Cure, do you now have any affiliation with

the railroad?

A I am retired from the railroad.

O And when did you retire?

A June 30, 1971.

O And are you on a pension?

A Yes.

O Now, at the time of your retirement, what was your position with the railroad?

A Executive vice-president.

O Did you ever work for the United Fruit Company?

A Yes.

O And at what position and when?

A I worked for the United Fruit Company from 1929 to 1934 in various positions, as a field engineer in various positions.

O In what country?

A Honduras.

O Did there come a time when you were offered a position by IRCA?

A Yes, sir.

O And what was that offer?

A To go to Guatemala to work as a road master.

O And in what year wasthat?

A The fall of 1936.

SOUTHERN DISTRICT COURT REPORTERS
Court House

Q And was that for the Guatemala Division?

A Originally it was, and I originally went to the Salvador Division and then was moved to Guatemala within a month.

Q Did United Fruit Company make any recommendation with respect to your acceptance of that offer from IRCA?

A No, sir, not officially.

Q Unofficially did they?

A Unofficially.

MR. KLINGSBERG: I object.

THE COURT: I don't know what difference it makes. He is a professional engineer.

Q From 1934 to 1940, what was your position with IRCA?

A As a road master.

Q From November of '34 to 1940, was that road master in the Guatemala Division?

A Yes, sir.

Q And in 1940 to '41 what was your position with IRCA?

A I was in Salvador as a general superintendent -- superintendent and then later general superintendent.

THE COURT: In what?

THE WITNESS: Salvador.

Q Would that have included superintendence of mainten-

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. TELEPHONE: CORTLAND 7-4580

ance of weigh and transportation departments?

A Yes.

O And in 1941 to 1944 were you not in the service of IRCA?

A I was not.

O And did you return to the railroad in March of 1944?

A Yes, sir.

O And was that with the Guatemala Division?

A Originally, yes, sir.

O And in May of '44 did you go to Salvador as the general superintendent?

A Yes, sir.

O And from '49 to '63 were you the manager of the Salvador Division?

A Yes, sir.

O In December of '63 did youcome to Guatemala?

A On a part time basis, yes. I was working in both divisions.

O You were working in both divisions. And what was your title in '63?

A Vice-president of operations.

O And where did you live?

A In Salvador.

O And then what was your next job in IRCA?

A Well, executive vice-president.

Q Well, before you were executive vice-president, were you the vice-president and general manager of both divisions in about May of '65?

A Yes, I was. That's true.

Q Now, from December of '63 until May of '65, who did you report to?

A To Mr. Haase.

Q And you testified you became the executive vice-president. Was that sometime in 1966?

A That was in '65, I believe. No, it was '66. You are right.

Q And did you stay in that position until you retired?

A Yes, sir.

Q And that was in 1971.

A Yes.

Q Do you recall in January, 1968, the SMAF, the railroad union, commenced another strike against IRCA's operations because they didn't pay the Christmas bonus at the end of 1967?

A Right.

Q And do you recall at that time that the Government threatened to cancel the railroad's franchise if it didn't end the strike and assume normal operations?

SOUTHERN DISTRICT COURT REPORTERS

A I do not recall a formal threat to that effect. There were newspaper accounts of that type.

THE COURT: The question is did something in the political atmosphere induce you to grand the demands of the union which you otherwise might not have granted?

THE WITNESS: Yes, but not directly threats to cancel the franchise, your Honor.

Q The government was carrying on a press campaign against IRCA, was it not?

A I was led to believe that, yes, sir.

Q And the union supported the government, did it not, in connection with the threats in the press of cancelling the railroad's franchise?

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURTHOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

A In its demands against the railroad, yes.

O The union was interested in the Government cancelling the railroad's franchise, wasn't it?

A That would seem to be apparent at that time.

O Did IRCA seek to borrow money at this time in order to cover some of its debt?

THE COURT: At what time?

MR. KLINGSBERG: In or about January, 1968?

THE WITNESS: Yes, sir.

Q And to whom was that application made?

A Well, we attempted to borrow money from the government.

THE COURT: Which government?

THE WITNESS: The Guatemalan government.

Q Did the union oppose the government's granting the application for the loan?

A I don't recall clearly whether they objected to it or not. They were interested in getting their money.

Q I show you a document, Defendant's Exhibit 448 for identification, which contains a translation of a newspaper article, from El Imparcial, Guatemala, dated January 12, 1968.

It refers to the fact that the Secretary-General of SAMF indicated that the workers had unanimously rejected the formula proposed by the government for advancing the sum of 600,000 quetzals for payment of part of the wages owed them.

Do you recall that incident?

MR. BENDER: Your Honor, I object to Mr. Klingsberg reading something into the record which is not in evidence. I don't think that is a proper procedure.

THE COURT: That is a good objection.

Q I just show this portion of the translation

and ask if that refreshes your recollection in regard to the position which the union was taking at this time in regard to the government helping out the railroad.

A To the union's opposition to the government helping the railroad? Yes, it does. As to the sums involved, I cannot testify.

Q What was the union's position in regard to the government helping out the railroad?

A They wanted the government to take over the railroad, as I understand it.

Q Now, in approximately February 1968 were you part of a mixed commission appointed by the government to study the IRCA problem?

A Yes, sir.

Q I show you Plaintiff's Exhibit 306 in evidence and ask you if you joined in the proposals of the mixed commission which are listed in this document.

A Yes.

Q Now, one of the recommendations was that IRCA should sell its properties which are not indispensible to its proper operation.

What properties did you have in mind?

A A property called Pamplona and a property called

Gerona and a property at Barrios and portions of the property in the Guatemala yards, the objective being to move some of the Guatemalan installations to another place called Zacapa, and that would make this high-priced real estate in the city of Guatemala available for sale.

Q And you expected to get the equivalent of six million dollars if you could make those sales, is that correct?

A That is right, at that time.

Q And did you need the approval of the government to engage in that sale of property?

A Well, the government could have blocked the sale, let me put it that way, by refusing to register the deed.

Q So that IRCA was not going ahead with this sale because it didn't have government approval.

A Without having government approval we would not.

Q And you didn't get government approval, did you?

A Not in my time.

MR. BENDER: I didn't hear that answer.

THE WITNESS: I say not at that time.

Q Now, another recommendation in which you joined was that the government use its good offices so that the IRCA may secure credits for new locomotives, car rails, et cetera.

Did the Government do that?

A No, sir.

Q Why was that an important factor in IRCA solving its problem?

A Because we needed to buy that material on long term credit, and if the government would refuse to endorse it we couldn't obtain that type of financing.

Q Now, it also states that, "The following are considered indispensible: The installation of the Customs House at Puerto Barrios away from the pier so as to provide free access."

Why was that indispensible?

A Because the Customs House blocked part of the pier in Barrios, and we considered it indispensible to have free access to the pier and to the Customs House.

Q And did the government allow you to do that?

A No.

Q The next indispensible item is the construction and use of a spur track to Matias de Galvez. Why was that indispensible?

A So we would have access to the port of Matias de Galvez and also have access to an oil refinery which was built alongside of it, along the site of the proposed spur.

Q Did the government permit you to get either rail

access to Matias de Galvez or access to this refinery?

A That work was started later, not as a result of this.

O You mean it was started after the government took over the railroad?

A Right.

O The government wouldn't let you do it, but once they took over they did it themselves.

A That was more or less correct.

Q Now, the next indispensable item is the increase of wharfage rates at both ports to the rates formerly charged.

Why was that indispensable?

A Matias de Galvez had cut their rates very low, and we considered at that time that the rates were too low to make a reasonable profit on some items.

THE COURT: What rates are those? The wharfage rates.

A The wharfage rates, your Honor.

Q Then, it refers to a recommendation that the Government interpose its best efforts to procure the termination of labor contracts of the workers that as the result of the reorganization are no longer required.

Did the Government do that for you?

A Not at that time.

Q The Government did that after it took over the railroad itself?

A They did some. They helped us some after they loaned us money, not as a result of this particular document. And they did much more after they took over the railroad.

Q Again, in or about January or February 1968, the Government appointed an Interventor, or Intervenor, is that

correct?

A An interventor.

Q They call it interventor?

A Yes,

Q And did you regard that as an action with due process of law?

A I don't recall all the details in connection with the naming of that Interventor.

Q Didn't you say, in Defendant's Exhibit 481 in evidence, that this was an arbitrary action before due process of law was complied with? (Handing)

A Yes, sir.

Q And wasn't that a fact?

A That was a fact at that time.

Q And who was the Interventor? Was that Mr. Paiz--how do you pronounce that?

A P-o-t-i-l-l-o P-a-i-z?

Q Yes.

A If you give me a piece of paper, I'll give you his full name. He has two surnames. (Writing)

Q And what was this gentleman's attitude toward the railroad, towards the IRCA?

MR. BENDER: I object, your Honor, "What was his attitude."

THE COURT: Sustained.

Find out first how long he was there, what were the dates, and so on.

Q When was Mr. Paiz appointed, approximately?

A Early '68, I believe.

Q And how long did he remain as the Interventor?

A As I recall, he was there for a period of two to three months.

Q What were his duties at that time?

A I didn't understand the question, please, sir.

Q What did he do during the period he was Interventor?

A Principally controlled income and disbursements.

Q What particular actions, if any, did he take?

A By controlling the payroll schedules, payments.

THE COURT: Did he sign checks?

A He co-signed.

Q Now, did Mr. Paiz pay this Christmas bonus which you felt you weren't lawfully required to pay because the railroad wasn't making money?

A I don't recall that he was involved in that bonus question. There was another Interventor that was involved in '65 or '66. But I don't recall that Mr. Paiz was directly involved in a bonus question or not.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

Q What was the reason why you wrote to Mr. Yaeger in Defendant's Exhibit 483 in evidence that Mr. Paiz was active in union activities during the Arbenz Administration, was definitely anti company and anti-U. S. inhis political orientation?

A That's what I felt that he was.

Q Did he take any actions to reflect his attitude?

A Well, his attitude was generally belligerent, shall we say.

Q I show you PX 248 and refer you to the bottom of

page 1 and the top of the second page and ask if that refreshes your recollection.

THE COURT: What exhibit number is that?

MR. KLINGSBERG: Plaintiff's Exhibit 248 for identification.

THE COURT: Do you have a copy for me?

MR. KLINGSBERG: Yes, sir.

A This is a letter Mr. Yaeger wrote to the president of Guatemala, right?

Q Yes.

A I agree with his statement there.

Q Do you agree that it was the union who was in reality responsible for the state of events as regards IRCA in Guatemala in November, 1968?

A At that time, yes, sir.

THOMAS E. SUNDERLAND, called as a witness by the defendant, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KLINGSBERG:

Q Mr. Sunderland, are you the president of the United Fruit Company?

A I was.

Q During what period of time?

A From November 1st of 1959 to--I later became chairman, but I was either president or chairman from November 1, 1959 to the summer of 1968.

Q Now, prior to coming to United Fruit Company, what position did you hold?

A I was vice president and general counsel to Standard Oil of Indiana.

Q And prior to that, what was your position?

A Prior to that I had been a practicing lawyer in New York City.

Q Did you ever hold any general counsel position with any other corporation?

A For a short time I was general counsel of a subsidiary of Standard of Indiana before I became general counsel of the parent company. Other than that, I've had no other job as general counsel of a corporation.

Q You are, are you not, a member of the bar of New York and other states and other courts?

A I am.

Q What field did you specialize from the period that you were both practicing law and also with Standard Oil?

A I won't say there was any field I specialized in. In general practice I had a range of problems.

Obviously when I went to a corporation my practice was pretty well limited to the type of legal problem that a corporation has. In the course of those years I spent a good deal of my time in the antitrust field, if that's what you are referring to.

Q Did you lecture in the antitrust field?

A I did.

Q And did you have anything particularly to do with the American Bar Association antitrust law section?

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURTHOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

A I was one of the founders of that section. I appeared two or three times before the Board of Governors asking that the section be created and I was a member of its governing board for several years and I was Chairman of the Section for one or two years.

Q Now, sir, would you tell the Court how it came about that you were hired as the president of the United Fruit Company?

A The first contact I had was a telephone call when I was living in the Chicago area, a telephone call from a man in New York who asked if I would come in and see him the next time I was in New York, and I asked him why.

The man I had known, when I knew him he was with United Steel Corporation. It developed he was with one of these executive recruiting agencies at the time and he wanted to ask me whether I would be interested in a position with the United Fruit Company.

I did come to New York within a couple of weeks after his call and I did go in and see him. Up until that time I had never met, I did not know a single officer, director or employee of the United Fruit Company.

Q What, if anything, were you told with regard to the reasons why the United Fruit Company was interested in you?

A I was told that the United Fruit Company was in trouble, they thought they needed new management. They were looking for a man who had corporate management experience, who had legal experience, and in particular, one who had some antitrust experience.

THE COURT: Who was the president at that time?

THE WITNESS: Of United Fruit?

THE COURT: Yes.

THE WITNESS: A man named Redman.

THE COURT: Who was the chairman?

THE WITNESS: A man named Gardner.

Q Was it Mr. Gardner who told you this about the reasons why the company was interested in you?

A It came in several conversations, part of it from Mr. Gardner, part of this from this man Lawton Johnson, who was the man who had telephoned to me.

Q Was there some particular event which sparked your decision to accept the appointment?

A No. I took it under consideration. I spent quite a long time.

I was not in the early stages in the least bit interested in going to the United Fruit Company, I was very happy where I was. I had some people in the financial world look into the company for me. They reported it was a company

that they thought needed new management, with a great deal of room for improvement in much of what they were doing and as two or three or four months went by--I think it was at least that long, I gave them a decision--I became more interested and I eventually said yes.

Q In the course of making your decision, did you learn anything in or about the fall of 1959 concerning United Fruit's dividends?

A While I was still considering it, I got a call from the chairman of the board telling me the board had decided to pass the dividend for that quarter and he hoped that that would not adversely affect my consideration of whether or not to go to the company. My recollection was that that call was in August of 1959.

Q When you arrived at the United Fruit Company, I take it you learned that there had been a consent decree entered into with the United States Government concerning various antitrust matters?

A I knew about the decree before then. In one of my annual reviews on developments in antitrust law, which I annually gave at the American Bar Association meeting, I discussed that consent decree, little knowing that I would have to liva with it.

Q What, if any action, did you take when you arrived,

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

or soon thereafter, concerning United Fruit's compliance with the decree?

A Early in my term there, and as soon as Mr. Folsom became the general counsel, which happened within a few weeks after I arrived, we put out one or two rather comprehensive memoranda to the organization, outlining the decree, stressing the fact that it would be complied with and urging everybody to study it and be prepared for discussions as to how it could best be implemented.

Q Apart from the decree, did you take any action to assure that the company complied with the antitrust laws as such?

A Yes, I did. We, being Mr. Folsom, our general counsel, and I, made it very clear in one or more memoranda to the organization, that we were going to take the antitrust laws very seriously, and Mr. Folsom made trips to all of our installations outlining the need for strict compliance, and it was emphasized from the president's office that we meant business.

Q Mr. Sunderland, when did you actualy start work on a full time basis at the United Fruit Company's offices in Boston?

A Full time was January 1, 1960. I spent three days a week, sometimes four days a week, from November 1st through December 31, but I still had matters to clean up in Chicago with the Standard Oil Company and I was there at least one day a week.

Q Soon after you arrived, did you take a trip to the tropics?

A I did.

Q And with whom did you take this trip?

A I recall the trip was in January of 1960, and George Gardner, who was our board chairman, a man named Richard Nichols, who was a practicing lawyer in Boston on the board of the United Fruit Company went with us. I believe that was the group.

MR. KLINGSBERG: I would like to mark, please, as Exhibit 169-A for identification a map which we will use for illustrative purposes, which was taken from

the 1960 annual report of the United Fruit Company.

(Defendant's Exhibit 169-A was marked for identification.)

MR. KLINGSBERG: I will offer it in evidence.

MR. BENDER: Where is it from?

MR. KLINGSBERG: The 1960 report of the annual report.

MR. BENDER: I have no objection.

THE COURT: Received.

(Defendant's Exhibit 169-A was received in evidence.)

Q Mr. Sunderland, in connection with your trip, did you visit Tiquisate?

A I did.

Q As we go perhaps it might be helpful if you indicated the various areas on the map because we are going to cover some of the other areas.

Could you point out the Tiquisate area plantation?

A The Tiquisate is here on the western side of Guatemala.

Q Did you visit the east coast of Bananera plantation?

A I did. That is opposite Tiquisate.

Q What other plantations did you visit?

A We made the whole circuit with Tiquisate in

Guatemala, then going to Bananera in Guatemala, then to Honduras, LaLima. We skipped the Bluefields area of Nicaragua and skipped the Limon area in Costa Rica, went down to Almirante on the Atlantic side of Panama, then across to Armuelles on the Pacific side of Panama, then to Golfito on the Pacific side of Costa Rica.

We also went to Santa Marta in Colombia.

We did not go to Quayaquil, Ecuador at that time.

Q With whom did you meet when you visited Tiquisate?

A Met with the manager, Mr. Van Diepen.

Q What did Mr. Van Diepen tell you at that time with regard to the condition of his plantations?

MR. BENDER: I object, your Honor.

THE COURT: Overruled.

A He outlined a rather sad case. The division was suffering from what we in the company called Panama disease. It was an organism in the soil which attacked the roots of banana plants causing them to wither and eventuall die. Panama disease was increasing in the Tiquisate area.

He was having great trouble with blowdowns. The wind conditions in Tiquisate were producing blowdowns that were disturbing him greatly. And he was having problems with getting the fruit in good condition over to the Atlantic side of Guatemala, where it was put on the ships

that United Fruit sent down there.

Q Did Mr. Van Diepen tell you the reasons why there was a problem of getting the fruit in good condition to the boat?

A Yes. The problem related to shipments over the IRCA railroad.

What had originall taken less than a day was now taking more than two days. The trip was a rough one. The fruit started out at treopical heat at sea level, the trains went over the mountains in the middle of the Isthmus, where it was cold, went on down to sea level again where there was tropical heat and then were eventually put -- the fruit was eventually put in the ship, and that variation in temperature was causing trouble because that frequently triggered the ripening mechanism of the banana and this caused problems in getting good quality fruit into the market.

THE COURT: Triggered the what mechanism?

THE WITNESS: Ripening.

Q As a result of what Mr. Van Diepen told you in 1960, did you throw up your hands and say you were going to close Tiquisate at that point?

A No, no.

Q What was yoru reaction in response to this advice?

A The response was to see what we could do about it.

We discussed while I was there the possibility that boxing the fruit before being shipped across from Tiquisate to Puerto Barrios, whether that would help and we decided we would try experimental shipments to see if it would help.

Q Was there anything else that you decided to try to see if the situation could be cured?

A Yes. They had found -- "they" being the division management there in Tiquisate -- they had found a low growing sport --

THE COURT: A low growing what?

THE WITNESS: Sport, which is a term for an off-shoot of a banana that doesn't act the way its parents did.

They found a sport of the Gros Michel banana which was a lower growing plant and a low growing plant obviously does not have the blowdown problems that the taller plant does, and they had great hopes, which I encouraged, in trying to develop the so-called cocos banana, which was the name applied to this sport of the Gros Michel, they wanted to develop the cocos banana, see if that would give them a better record on the blowdown problem and I certainly encouraged them.

Q And did you authorize planting of these cocos bananas?

A Yes. They were -- they had already started, but I encouraged that it be continued, yes.

Q Did Mr. Van Diepen tell you anything about the rainfall situation in Tiquisate?

A Yes. He was having to irrigate. The rainfall was either not enough or not steady enough over the year to give him the moisture he needed for a crop over the year and he was irrigating, which, of course, was running up his costs and he was well aware of the fact that this was an extra cost item.

Q Had any improvements been instituted during the past several years in this regard?

A Yes. They had started what was called undertree irrigation as distinguished from -- well, let me -- undertree irrigation, which was a low type of sprinkler that only sprinkled the ground around the plant as distinguished from a high level sprinkler under very heavy pressure which spread water over the tops of the plants in the area that the sprinkler would reach, and it was found that this was more efficient and less costly.

Q In your discussions with Mr. Van Diepen in 1960, did you consider any other income producing operations

apart from bananas in connection with your future plans for this division?

A We had heard of beef cattle in Guatemala at the time. They had originally been started because we had the problem of feeding our own employees without means to do it unless we grew our own beef, and I discussed with him the possibility of expanding that into a commercial operation.

Q Did you also consider any other means of obtaining some income for this division in your discussions with Van Diepen?

A We had extra land that we were not using and I think we had a brief discussion of perhaps selling some of that. I don't believe it was a major discussion, however.

THE COURT: I am getting a little confused between the division itself and the Tiquisate plantation. Which have you been referring to?

THE WITNESS: They are synonymous. Everything I have said --

THE COURT: Relates to Tiquisate?

THE WITNESS: To Tiquisate and the Tiquisate division.

Q There was a separate division on the east coast?

A On the east coast we called it Bananera, that division as distinguished from the Tiquisate division.

THE COURT: When you say there was some extra land to be sold off, was that in the Tiquisate area?

THE WITNESS: Tiquisate. I am talking only of the Tiquisate at the moment.

Q The Tiquisate area was owned by a separate corporation called CAG, or Compania Agricola de Guatemala?

A That is correct.

Q And the east coast plantation was operated by the United Fruit Company?

A That is correct.

Q Did you learn anything in your visit to Tiquisate about the cotton business in that area or in Guatemala?

A I learned there was a cotton business in Guatemala, which I'm not sure I had known before I went, and I learned that people were making money from it. Other than that I don't suppose I learned anything.

Q Did you visit the eastern plantations of the United Fruit Company in the Bananera division?

A I did.

Q And with whom did you speak at that time?

A To Mr. DeLawder, who was then the manager at Bananer

Q And what did Mr. DeLawder report to you?

A Another sad tale about the woes of growing bananas.

He was bothered with Panama disease, he had had floods in the past that had not -- that had caused him troubles from which he had not recovered. He was having some cold weather problems and generally his production was down and he was very sad about it.

Q Did you also meet with Mr. Haase of the IRCA when you made this trip?

A Yes, I did.

Q What did Mr. Haase say to you and what did you say to him?

A It was a very brief meeting, mostly association. I told him I was making the trip to get acquainted, but we discussed in very general terms the relationship between the railroad and United Fruit Company.

I told him I didn't know much about operating details, but I asked him if he had any major problems. His reply, I remember it clearly, he said his major problem at the moment was with his own board of directors who couldn't decide to buy General Electric diesels or General Motors diesels.

That passed as a pleasantry and I don't think we discussed much else.

THE COURT: Excuse me. This was after the findings in the Ripley case, is that right?

THE WITNESS: That is correct.

THE COURT: Did you discuss the Ripley case with him at all?

THE WITNESS: Oh, we made reference to it, we didn't really discuss it.

This was January of 1960, so at this time the final decision of the Court of Appeals had not come down.

THE COURT: I understand that. But you already had Referee Hammer's decision?

THE WITNESS: Oh, yes.

Q Did Mr. Haase complain to you in any respect about being required either by contract or otherwise to discriminate against United Fruits or CAG's competitors in Guatemala?

MR. BENDER: I object to that, your Honor.

THE COURT: Read the question back.

(The record was read.)

THE COURT: I will allow it.

A He did not.

Q What were you told by the manager when you visited Honduras?

A Another sad tale. This trip was made up of sad tales.

Honduras was in terrible condition. Panama

disease had decimated what had once been the most flourishing division United Fruit Company had. There was fringe production, very spotty in places. The cost of harvesting fruit from spotty production of that kind was very high, the quantities were not adequate and he was in dispair about the chances of bringing Honduras back in any way.

Q Did you visit Golfito in Costa Rica, and what did you learn about that division?

A Golfito came at the end of the trip, but I did visit it, yes.

The only two divisions that were doing well at all were the two west coast divisions, Golfito in Costa Rica and Armuelles in Panama. Those divisions had good production they had not suffered much from Panama disease at this time, they had good quality fruit and both managers were thus particular about what they were able to do.

Q Did you learn anything about the reasony why, for example, Armuelles did not have the Panama disease problem that Honduras or Guatemala had?

A Panama disease was there, but it was spreading very slowly. For a long time there had been -- this had caused some puzzlement in the company as to why it spread so slowly, but it was eventually determined that the acidity of the soil was such that these organisms did not spread

as fast in Armeulles as other places, and to some extent this was true also in Golfito. Both divisions eventually had their problems, but at this time they had not developed seriously.

Q Did you also visit Almirante in Panama?

A I did.

Q And what did you learn about that division?

A This division was a government division with practically no production. Panama disease had decimated all their original production. They made an occasional shipment to some of the outlying areas, but it was a very, very sad place.

Q What, if anything, did you learnabout the Santa Marta Division in Colombia?

A Another sad tale. Santa Marta was about to close up. Their shipments were down to such a trickle and their costs were so high that they didn't see any future. They were keeping going because we needed that fruit for our European trade.

Q What were the problems in Santa Marta?

A The same two as in the others, Panama disease had driven them out of the good areas into the outlying areas and they had bad blowdown problems.

Q You say the same two as the others. Did you have blowdown problems of a serious nature in all the other

plantations?

A We had them in all divisions, but the relative problem differs.

In Almirante, for example, the blowdown problem is probably a minimum of any of our divisions.

Honduras was worse. By the time you got to Guatemala the wind problem was severe.

On the west coast, Armeulles in Panama had more problems than Almirante, but not so serious that it was causing great difficulties.

Golfito had some wind problems. Again, at this point, at least, not ones that couldn't be overcome.

Q Did you reach any overall conclusions as a result of your trip in regard to company policy?

A One serious problem that existed everywhere was Panama disease and I had done some preliminary thinking about Panama disease before ever going to the tropics as a result of a conversation I had soon after I first got to Boston in November of 1959.

A retired vice-president of the company named Hartley Rowe, who had been in charge of our research activities in the company for some years and was a very distinguished scientist, came in to pay me a visit and I asked him what he would do if he was confronting the problems that I then was confronting on trying to make the United Fruit Company into a profitable organization, because the company was sliding downhill and was heading for financial disaster.

He said yes, there was one thing he had to suggest, and that was to consider growing a variety banana.

THE COURT: A what?

THE WITNESS: A variety banana.

Your Honor's question is exactly like mine. I said, "What? I never heard of a variety banana."

It develops that that is a term in the trade which refers to a banana of the Cavendish family. And I asked him what was unique about that. He said the family

of the Cavendish banana is resistant to and perhaps immune from Panama disease.

He said, "If you can develop a banana that is resistant to Panama disease so that you can go back into your old divisions and into the areas that you have cleared and drained and cultivated for bananas and do all this without substantial additional capital expenditure, which you can do," he said, "Then I think you have this company on a basis where it has a chance to survive."

Q Did you also have a conversation with Mr. Freiberg on the Valery variety banana?

THE WITNESS: For your Honor's information, the Valery banana is a type of variety banana and it is the one we eventually came to even though we had an intermediate banana called the Lacatan which you will hear about as we go along.

A Within a week after Hartley Rowe had come to see me, a young research scientist in our research department had come to see me and said that he wanted me to know there was a thing called a variety banana, that we had variety bananas growing in our research plots in Honduras, that they were resistant or immune to Panama disease and he thought that I should know about it and that I should acquaint myself with the possibilities of this new type of banana because

one of the great problems in the company was the inroads of Panama disease in our Gros Michel banana production.

Q What is the Gros Michel banana?

A The Gros Michel banana is the banana that the United Fruit Company had grown for 75 years, had grown exclusively.

Q Did you make another trip to the tropics shortly after your first trip?

A Oh, yes, I made frequent trips, and I think the next one was within a month or two.

Q During that trip, did you actually observe the variety banana?

A I did.

Q Did you observe any aspects of it which you thought might create problems?

A When I was in Almirante the first time, I first heard about the Lacatan banana, also one of the so-called variety bananas. There were a few of them growing in Almirante I encouraged them to push ahead with that because I thought that the variety banana probably offered the key to the resuscitation of the United Fruit Company.

On my second trip down, the one you are now asking me about, I went to both Almirante and Honduras, I saw the lacatan banana growing. It was a tall plant so that we had not gained anything from the blowdown problem by growing

this but I saw in Honduras another variety banana which we called the Valery which was a low-growing plant and it grew as good fruit as the Lacatan, in fact a little better in some ways, in that the stalks were generally a little heavier and the banana had a little shorter rotation period between harvest and the next crop. I was obviously, of course, very much interested in what I observed.

The Lacatan had a problem that I had not realized on my first trip. The banana is connected to the stalk by a very long neck which gets flexed in the process of being harvested and shipped, and in the flexed neck there is a chance for organisms to get in which cause rot in the banana, and we were having a great deal of trouble with that.

The Valery banana, on the other hand, had a much shorter neck, didn't have as much problem in this regard.

Q What problems, if any, didyou learn or observe were present in connection with the Valery banana?

A I learned about a lot of the good attributes of the Valery. The very heavy weights of the stems that were produced, the more rapid rotation in that you could get a crop at least one month sooner from the Valery than you could from the Gros Michel or the -- as I recall, even from the Lacatan.

It had one problem that tended to cut down on

the advantage that came from its low growing height. It had a shallower root system than we found to be the case with the Gros Michel and so while it was vastly better in a blow-down situation than the Gros Michel because of just the height, occasionally you would get uprootings that you will not find in the Gros Michel.

Q Now, did the skin of the Valery compare with the Gros Michel?

A All of the variety bananas, so far as I know, and certainly the Valery banana has a much thinner skin than the Gros Michel.

It bruises more easily, and my staff told me that one of the reasons the company had never done any very extensive experimentation with the Valerie banana was because it was difficult to handle in shipment.

The stalk was brittle and would often break. In those days before boxing, if the stalk broke, you couldn't handle the unit and had to throw it away. So that with the brittle stalk and the easy bruising and shipping stems just jammed into each other in the hold of a ship, we found trouble getting a non-bruised banana into the market.

And this caused me problems for a while until I concluded the way to handle this was to move the boxing operation from the States down into the Tropics.

Q What boxing operating are you talking about?

A Traditionally with the Gros Michel banana, we brought the banana to the States in stem form and it was sold to the jobber in stem form. The jobber took the banana to his ripening room and, in the course of ripening, boxed it in a 40 pound box, in which condition it went to the grocery store or supermarket. And it occurred to me, and I

found subsequantly there were people who were doing this, it occurred to me that if we boxed in the Tropics that the bruising of the Valery banana in shipment and the breaking of the stalk would all be eliminated and this might make it commercially practical to grow the Valery banana in the Tropics.

Q Now, based upon all those facts which you learned about, both the agronomic facts and the marketing facts, what, if anything, in 1960, did you decide to do; what plan, if any, did you institute concerning the development of the variety banana?

A I pushed the development of the variety banana in every way that I could. There were some things I could not do. We had a very small amount of these variety bananas and you can only--and no seed was available anywhere in the world.

This was obviously in our research plots.

Q In your what?

A In our research plots in Honduras. You can only expand a banana cultivation about five times each year. So, if you started with five acres, you could only have 25 the second year and you multiply by five each year thereafter.

So it would take quite a while before I could get into commercial quantities.

One thing that disturbed me was that--and this is always a possibility in an agricultural activity--that things that look very fine and very promising in research quantities, develop problems when you get into commercial quantities.

While our test shipments in research quantities went very well, were very encouraging, I was well aware of the fact that until we got into commercial quantities we wouldn't really know.

Q Was this transition, developing the variety banana into something that could be commercially grown and sold, was that something that could be done overnight or did you expect it would take time?

A I knew it would take time. I told our stockholders at all of the annual meetings that it would take time and told them in all probability we wouldn't know for sure until 1964 or 1965 whether the variety banana was going to solve as many of our problems as we thought it would.

Q Did you have to do any changes in connection with the way you handled your relationships with the jobbers and wholesalers in order to make the variety banana commercially successful?

A We had resistance from the jobbers. They preferred to buy on the stem because they always had. They

preferred to do the boxing because they always had. Some of them put their own brand name or sticker on the box and a few maybe even on the banana when it went to the supermarket.

And one of the things involved in our whole activity in this connection was to create a situation where we could brand our own fruit and advertise to the public that you could buy Chiquita banana, which we had never been able to do before, because you couldn't tell one banana from another in the market.

THE COURT: When did Chiquita start as a mark?

THE WITNESS: It was a name the company had used for years. There was this little jingle that was popular and was used in some advertising. We did not apply it to a banana as a trademark on the banana until sometime in 1960.

Q Did you do consumer testing of the variety banana?

A We did.

Q What was the reason for that?

A Many people in our organization, particularly our sales group, were convinced that the consumer would not buy a variety banana. Our people thought, very sincerely, that the Gros Michel banana was the only worthwhile banana and the variety was a very poor second or third, and that the customers would not buy it and they were convinced that we

were putting ourselves out of business by going into the variety banana activity.

Q Did it have a different taste?

A The variety banana, certainly the Valery, is a little bit sweeter than the Gros Michel.

Q Did it also ripen and hence get rotten faster?

A It had different ripening characteristics than the Gros Michel. The Gros Michel was almost a foolproof banana. You could start and stop the ripening process within limits, but almost at will, within reasonable limits.

The Valery banana, and I believe this applies to all variety bananas, once you start the ripening process you have to continue it. The banana did not back off from the ripening process once it gets started.

To follow up on your asking about marketing, we conducted marketing tests. We got supermarkets who cooperate with us and we would have two shelves, for example, of bananas and one week the Gros Michel would be on the top shelf and the Valerie on the bottom shelf, and the following week we reversed without the customer being able to tell, and then we would interview the housewife to see what the reactions were, and to my great pleasure, the reaction seemed to favor the variety banana over the Gros Michel, because the customer seemed to like that somewhat sweeter taste.

DIRECT EXAMINATION

BY MR. KLINGSBERG (Continued):

Q Mr. Sunderland, when you arrived at the company

at the end of 1959, beginning of 1960, the Ripley case was still on appeal, is that correct?

A Thatis correct.

Q And is it a fact that at this time and until the appeal was determined the relationships between IRCA and United were basically in the hands of the lawyers?

A Correct.

Q Did you personally, during the period until the appeal was decided, attempt to exercise any influence or control over the internal affairs of the IRCA?

A None whatever.

Q Subsequent to the appeal, did you personally ever attempt to influence or control the internal affairs of the IRCA?

MR. BENDER: I object to that, your Honor, as calling for a conclusion.

THE COURT: No, I will allow it in general terms. It is probably preliminary.

A I did not.

Q Will you identify for us James McGovern?

A Yes. James McGovern was a lawyer in the Law Department of the United Fruit Company when I arrived. I believe he had a title either general attorney or assistant general counsel, something to that effect.

Q There has been testimony in the record already which Mr. Bender elicited that he passed away on February 16, 1961.

That accords with your recollection, does it not?

A It does.

Q Prior to that date, did you have any conversation with Mr. McGovern in regard to -- let me ask you preliminarily strike that.

Was Mr. McGovern on the board of directors of IRCA?

A I believe so.

Q Prior to his death, did you have any conversations with him in regard to that subject?

A I did.

THE COURT: What subject?

MR. KLINGSBERG: With regard to the subject of his service on the board of IRCA.

Q Can you tell us what you said and what he said in that regard?

MR. BENDER: I object, your Honor. Mr. McGovern is now deceased. We have no way of ascertaining or checking into what Mr. McGovern said at that particular point other than through this witness.

THE COURT: I think that is probably true. I will exclude the testimony at the moment.

Q Did you take any corporate action with regard to Mr. McGovern's continuation of service on the board of directors of IRCA?

A I did.

Q Will you tell us what that was?

A I told Mr. McGovern that he could not run for reelection if the case was affirmed.

THE COURT: Reelection for what?

THE WITNESS: To the board of directors of IRCA.

THE COURT: Of IRCA?

THE WITNESS: McGovern was a director of IRCA.

THE COURT: What control did you have over IRCA?

THE WITNESS: None, but I had control over McGovern. He was in my Law Department. I told him he could not stand for reelection on the board of IRCA.

THE COURT: If it was affirmed?

THE WITNESS: Yes.

THE COURT: If not, you didn't care?

THE WITNESS: If not, I wanted to see what the decision was.

THE COURT: When you came on, were there any interlocking directorates of UF and IRCA?

THE WITNESS: There were none.

Q McGovern was the only UF employee or officer who

was on the board of IRCA, is that correct?

A That is correct.

Q Did you take any other action with regard to Mr. McGovern and his position with the United Fruit Company?

A McGovern was of retirement age and I told him that he was going to have to retire.

MR. BENDER: I object in terms of what he told Mr. McGovern.

THE COURT: Whathe told him is all right.

A I told McGovern that he was of retirement age and he would have to retire. I told him he could not stand for reelection on the board of IRCA, and I guess that answers your question.

THE COURT: If he retired, why couldn't he stand for the board of IRCA?

THE WITNESS: Because I was afraid the continuing relationship of having someone who had once been a UF employee would be bad under the Ripley decision.

THE COURT: Just so I orient myself, how long did McGovern stay on the Board of IRCA, until when?

You say he died in office?

THE WITNESS: He died in office.

My next action was to write all the members of the Board of Directors of IRCA telling them under no circumstances to elect anybody or nominate anybody for election for the coming year who had any connection with the United Fruit Company.

Q In point of fact, did the United Fruit Company vote its stock in IRCA at the IRCA stockholders meeting in the spring of 1961?

A They did not.

Q In point of fact,did United Fruit Company play any part in the selection of nominees for the Board of Directors of the IRCA in the spring of 1961?

A We did not. We went further and asked the Board not to nominate or let anyone stand for nomination if they thought there was any prior connection with United Fruit Company.

THE COURT: How much of IRCA did United Fruit own at that time, common stock?

THE WITNESS: It was 200 odd thousand shares, and I believe it was 40 per cent.

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THE COURT: Did you later sell that stock?

THE WITNESS: Yes.

THE COURT: When was it that you sold the stock, if it is convenient now to tell me, so I can carry it in my mind?

THE WITNESS: The actual sale was about the end of that year.

THE COURT: '61?

THE WITNESS: Yes, or early January, '62, right in that period of time.

THE COURT: Who bought it, so I can follow the sequence?

THE WITNESS: There was a conglomerate I'd never heard of whose initials were BFS.

THE COURT: I remember that.

MR. KLINGSBERG: BSF.

Q Even prior to that time, had you been making efforts pursuant to the consent decrees to sell the IRCA stock?

A I had.

Q Can you tell us what efforts you made in that regard prior to the sale to BSF in January, '62?

A I had long negotiations with Louis Yaeger, who was a stockholder of IRCA, and we were at one time quite close

to an agreement for the sale of the stock, close enough so that we even drew a proposed contract that was being reviewed on both sides.

Mr. Yaeger finally changed his mind and the sale did not materialize.

Later, I tried to interest the Government of Guatemala in acquiring this stock. That never got off the ground. They didn't want it at all.

I believe the negotiation--at one time I tried to interest the management of a railway in Costa Rica in the stock of IRCA. I am not sure that I can place that in the right date, but some time I did.

The eventual sale was at the end of 1961 or early January, 1962, when a conglomerate named BSF, which I had never heard of and I am not even sure how they first came to us, but I know our treasurer came in one day and said he had an inquiry from a group that wanted to buy our IRCA stock and it eventually was sold to them.

I suspect the negotiations were in December of '61, and I think the sale became effective early in January, '62.

Q Would it be fair to say that from the time you came with the company until the actual sale, you were making your best efforts to sell the stock to whomever you could

get to buy it?

A Without any question. I tried hard.

Q Did you at any time attempt to keep the stock for any length of time so that you could use it to exercise control over the IRCA Board?

MR. BENDER: I object to that, your Honor.

THE COURT: I will allow it.

A At no time did I try to keep it. At all times I tried to get rid of it.

THE COURT: Can you tell us why you wanted to get rid of it, Mr. Sunderland?

THE WITNESS: The most obvious reason was the consent decree required it. So there was no argument.

THE COURT: The federal decree?

THE WITNESS: The state decree. I am sorry.

THE COURT: The federal decree?

THE WITNESS: There are so many judgments here I misspoke.

The federal consent decree required it and I knew I had to comply with that.

Q When Mr. McGovern died, do you recall that Mr. Haase was named acting chairman of IRCA?

A I think that was the case, yes.

Q And a new person named Grace was elected to the

Board?

A I am not sure I knew that.

I think I have heard that, yes.

Q Did United Fruit play any part in the selection or election of those two individuals to their positions on the Board?

A None whatever.

Q Do you recall having any particular provisions put into the draft contract which you had negotiated with Mr. Yaeger?

MR. BENDER: Objection, your Honor. What does that have to do with it?

THE COURT: Read the question back.

(Record read.)

THE COURT: What is the relevance of that?

MR. KLINGSBERG: Two things. I think the entire negotiation with Yaeger is relevant to show our efforts to sell the stock and there was also a provision which was put into the contract which was sent to Mr. Yaeger which was in the nature of a release of liability and also indicated that there was no promise of continuation of the United of the United Fruits business or anything of the sort, and the reason that was put in was because there was suspicion and fear that there were people in Yaeger's syndicate who might be using this as a device to bring litigation against the United Fruit Company over the IRCA situation.

MR. BENDER: But the contract never went through, your Honor.

THE COURT: That is all right. It shows intent and motive. I will allow that.

MR. BENDER: Motive on whose part, your Honor?

THE COURT: On the part of Yaeger, who later became a controlling stockholder, and also on the part of United Fruit.

MR. BENDER: What motive does it show on the part of Yaeger if United Fruit Company were the ones that were putting that provision in?

THE COURT: You can argue that. I am just allowing it in evidence. I am not saying I am going to consider it very strongly, if at all.

Q Do you recall any particular provisions that you insisted on in the draft agreement which was sent to Mr. Yaeger?

MR. BENDER: Objection, your Honor.

THE COURT: The form is bad.

Was there a provision in that contract that dealt with what? Now you phrase it yourself.

Q Let me try it this way:

I show you Defendant's Exhibit 93 for identification, and ask you if you can identify that.

I also show you Defendant's Exhibit 192 for identification, and ask you if you can identify that.

MR. BENDER: What is that document, 192?

MR. KLINGSBERG: 192.

MR. BENDER: What is it, though?

MR. KLINGSBERG: The witness is going to identify it. It is a draft agreement with a covering note.

MR. BENDER: Dated what?

MR. KLINGSBERG: 3/18/61.

MR. BENDER: Do you have a copy?

A Yes, this refreshes my recollection. I have not seen it since the day it was drafted, but there were several things that I insisted on.

First of all, a recital calling the attention of the purchaser to the provision in the consent decree requiring the sale of this stock so that he would be on notice of whatever was important in that decree.

I was careful to make sure there were no representations, implied or otherwise, with respect to the business or property of IRCA, and there was no representation as to the future conduct of the business of the United Fruit Company or any of its subsidiaries in Guatemala or elsewhere, including, particularly including no representation about shipment of bananas over the IRCA lines after the contract ran out.

The other provisions, I think, are somewhat standard ones that you would find in most sales agreements.

MR. BENDER: What agreement was the witness referring to there?

MR. KLINGSBERG: Defendant's Exhibit 193 for identification.

Q Would you look, sir, at Defendant's Exhibit 193 for identification and identify that for us?

A Without taking time to read it all, you have handed me another draft of an agreement between Lewis Yaeger and the United Fruit Company, and in my handwriting on a cover page is a notation that I had received this draft on March 18, 1961 from the Davis, Polk office, and the draft is, indeed, entitled at the top "Draft of March 18, 1961," and it has to do with the sale of the IRCA stock.

I would not know without a careful comparison, how it differed from the one I was talking about a moment ago. The one I was talking about a minute ago was a draft dated June 16, 1961.

Q I show you Defendant's Exhibit 210 for identification, which is a memorandum from you to Mr. Sisto, dated June 26, 1961.

Can you tell us what that is?

A My memorandum to Mr. Sisto quoted a resolution passed by the Board of Directors of the United Fruit Company of June 26, 1961 authorizing the president to sell the 233,000 shares of IRCA stock to Louis Yaeger for a price of $10 per share.

Q Finally, I show you Defendant's Exhibit 215 for identification, being a memo from you to Mr. Folsom and Mr. Sisto, dated August 14, 1961.

Would you tell us what that is?

A This last memo, dated August 14, makes reference to the fact that the negotiations with Yaeger are on dead center, nothing happening, and I'm wondering what we could or should do to try to rekindle Mr. Yaeger's interest in buying the stock.

Q Mr. Folsom was your in-house counsel, was he not?

A He was vice president and then general counsel.

Q Did you explain there why you were insisting on this provision for a release?

A Well, we wanted to be sure that we were getting free of litigation and we didn't want anything that happened in connection with the sale to have any damaging participles on the end of it that would create problems.

THE COURT: Was Yaeger one of the plaintiffs in the Ripley suit?

THE WITNESS: He certainly benefited from it. I don't know--

MR. BENDER: No, he was not, your Honor.

THE COURT: I was just wondering what the scope of relief might have been on Ripley. It would have no effect

on it, is that right?

MR. BENDER: Pardon me?

THE COURT: It would have no effect on the Ripley suit?

MR. BENDER: What, this? No, it would not.

THE WITNESS: No, no, no. It was not thought it would.

MR. KLINGSBERG: I would like to offer in evidence, Defendant's Exhibits 210, 215, 192 and 193 for identification.

MR. BENDER: Objection on the ground that it is irrelevant.

THE COURT: I will allow it.

(Defendant's Exhibits 192, 193, 210 and 215 respectively, were received in evidence.)

Q Sir, you testified this morning that when you arrived, the company was on the rocks.

Did you have presented to your in the regular course of your duties, various statistics, charts and tables from which you drew that conclusion?

A Yes. The annual reports themselves would show the bad condition of the company, but I had various analyses made after I arrived which further confirmed it. The purpose of the analysis, of course, was to try to pinpoint where the

trouble was.

Q And together with myself and others from my office did you review your files to try to select out some illustrative examples of the charts and tables which led you to that conclusion?

A I did.

Q I show you Defendant's Exhibit 135, which is headed "Net Earnings after taxes," 136, "Net Earnings and Dividends Declared," 137, "Percent of Net Earnings to Shareholders Equity," and 134, "Break Even Point versus Average Sales Price Per 100 Pounds of Bananas," and ask you if these are among the documents you have just referred to?

A They are.

Q And did you consider those exhibits in decision-making in the course of your regular duties as the president?

A I did.

Q Was it the regular course of business of United Fruit Company to make these documents?

A Throughout the time I was there I had things of this kind prepared which would enable me to make the decisions I had to make.

Q And was it the regular course of business of United Fruit Company to keep these documents?

A Oh, yes.

MR KLINGSBERG: I offer in evidence, your Honor, Defendant's Exhibits 134, 135, 136 and 137.

THE COURT: I will allow it.

(Defendant's Exhibits Nos. 134, 135, 136 and 137, respectively, were received in evidence)

BY MR. KLINGSBERG:

Q Mr. Sunderland, did you ascertain in the course of your duties the causes of the financial condition which was presented in these documents with particular reference to the banana business?

THE COURT: May I see those?

MR. KLINGSBERG: Yes, sir, Judge. (Handing.)

A Are these copies of the same?

Q Yes.

THE COURT: All right, you may proceed.

A The first overall thing that anyone would notice, and I did in looking at the figures for the company, was the very rapid decline in earnings.

The chart that is labeled at the top "Net Earnings After Taxes" shows a decline from around 60 million dollars of net earnings in 1950 down to, oh, about a million dollars -- it is a little hard to tell from this chart, but considerably less than ten million dollars.

THE COURT: Doesn't it appear in the left-hand column there?

THE WITNESS: Well, the chart, your Honor --

THE COURT: That is bananas and sugar.

THE WITNESS: Wait a minute. Yes, you are quite right. The figure over on the left shows the exact amount and the bananas were down to 12 million from 60 in the course of ten years. Those are earnings.

Q Incidentally, could you tell us what the figures with the F next to them mean?

A That is forecast. The word F is our shorthand for forecast, and that is what our people thought might be the figure by the end of 1960.

THE COURT: Actually '59 is 7.2 million net

earnings for the bananas, is that correct?

THE WITNESS: Yes, you are correct. I read you the estimate for 1960.

The correct figure is 7.2 million for 1959, and that's the only figure that is not a forecast.

We forecasted a better year in 1960 and we were grieveously disappointed. It did not happen.

Another way of looking at the same problem is in the chart labeled "Net Earnings And Dividends Declared Per Share," and there are two lines there, one showing the net earnings per share and the other how much was declared out during the year for dividends, and as is obvious from the chart, the two lines that met and at one time we were even paying out more than we had earned.

The chart that showed something about which something perhaps could be done is the chart labeled "Break-even Point Versus Average Sales Price Per 100 Pounds of Bananas."

It's quite clear from the chart how the costs had risen while the sales prices were coasting down simultaneously. But the cost item was something that at least I thought deserved very serious study, because perhaps that could be changed, and if it could that might be the key to some profitability in the company.

THE COURT: Why did the price go down?

THE WITNESS: Competition. There were vast quantities of bananas coming in from Ecuador and this was a competitive price.

MR. BENDER: I didn't hear the last part.

THE WITNESS: I said this was a competitive price.

Q Mr. Sunderland, what did you ascertain were the principal causes or cause of this decline in the company's financial condition, particularly in regard to its banana business?

A The overwhelming cause were those costs related to Panama disease. It was costing us about 25 million dollars per year to go into new areas to replace the lands that had gone out of production because of Panama disease. And if I could find some way to stop that 25 million, which was bound to become more millions as the years went on because costs were getting higher, if I could do something about that I thought perhaps I might at least have a start in returning the United Fruit Company to a profitable picture.

THE COURT: Can you tell me, looking back historically, when did the Panama disease become a serious threat?

THE WITNESS: It has been there for ten years minimum.

THE COURT: That means about 1950?

THE WITNESS: I must make a longer answer. Panama disease had been with the company always. In the early days when there were lots of new vigrin areas that could be developed cheaply, it wasn't much of a problem. In those days the company was very profitable, the amount of money that had to be absorbed because of abandonment because of Panama disease did not rank high in relation to the sales prices and there were many divisions that were abandoned and the company went into new areas.

Q Are any of those divisions on the map over here?

A Yes. Not all of them, by any means, but there are some. One of the finest divisions the company ever had was the Limon Division in Costa Rica, which was completely out of production when I got to the company in 1959. There was a magnificent big division up here in Honduras not far from LaLima which I believe was called the Trujillo Division. I believe I am right on that. It was abandoned completely.

The Bluefields area in Nicaragua had been a big company operation and it had been abandoned because of Panama. We at times had bought a few bananas there from independent producers and by the time I got to the company I don't believe there were any purchases going on at all.

THE COURT: Have you got a record of the years or do you recall the years in which these particular plantations

were abandoned?

MR. KLINGSBERG: I think we have something like that for your Honor.

THE COURT: I will hold it in abeyance. I want it in sequence.

Q I'm sorry, I interrupted your answer to his Honor's question.

A Those are the ones that come to mind. The best areas of Almirante had been abandoned and production was from the outlying area from the best areas of the LaLima Division in Honduras had been abandoned and production was from the outlying areas.

Q What was involved when you had to abandon Panama diseased land and go into new land?

A When you open up virgin territory, you have to -- these are normally low-lying swamps in the area of the ocean or a big riverbed. You have to clear the area, you have to drain it, grade it, arrange for irrigation canals, you have to build the tracks in there for the cars that will take the bananas to the port, you have to build houses, hospitals, schools, all the things that -- electric generating capacity, all the things that go for habitation, none of which would exist in these areas.

Q On a company-wide basis after you came in and

you started this project to develop the variety banana, what did you do during the transitional period while you were still testing the varieties? Did you continue with these huge expansions or did you do something else?

A No, we just tried to keep the ship afloat. We did such plannings as were necessary to keep our division going, but we mostly tried to keep our options open because if by chance the variety banana project was a failure, we didn't want to have burned any bridges behind us.

I carried through to completion one project which had been studied carefully before I arrived, and that was a Gros Michel Division in a place in Colombia called Turbo, which is down near the Panama border. It doesn't show on the map I am now pointing to, but it is very close to the border of Panama. And we had studied the possibility of a division there based primarily on associate producers whose we would give technical help, spraying help, we would do the collecting and the marketing but would not own the farms and would not be the employer of the labor involved in growing the bananas.

Q Does that require less of an investment than the places where you had the schools, the hospitals and the housing and so forth?

A Yes, indeed.

Q What were the agronomic conditions in Turbo which led you to the development there?

A It was a fine area in every way. The soil was good, it was virgin territory with no sign of Panama disease, no sign of any of the other diseases that cause problems for banana cultivation. There was a long estuary of water leading back into the area on which the bananas would be grown and in this area we could use barges to collect the fruit and take it to the ship anchored out in the channel. It was in a country where the people were used to being entrepreneurs on their own. They could borrow money on their own. They were used to being independent businessmen, which was not the case in all other countries, but Colombia is very good that way.

Q How did Colombia compare with Guatemala in that regard?

A They were much further advanced in running their own businesses in Colombia than in Guatemala.

Q What were you advised regarding the blowdown or wind experience in Turbo as compared with, say, Guatemala?

A At the time we made our investigations, there were no recorded winds that we could find a record of or could measure ourselves during the two or three years we had our teams in there which would have caused us any substantial

problem.

Q In addition to what you have already told us, during this transitional period did United Fruit Company purchase any bananas in Ecuador?

A Yes. In fact, that is the only way we stayed in business for a while, was to get bananas in Ecuador.

Q Did you view this as a permanent shift, leaving your plantations and going to a purchasing arrangement?

A Ecuador in my mind at all times was a stopgap arrangement until we could get our own production going.

Q In bananas?

MR. BENDER: I object to leading the witness.

THE COURT: Yes. Who did you buy from in Ecuador?

THE WITNESS: There are hundreds of small producers. When you take a ship into a harbor, they all swarm down there with a carload or several carloads and you buy whatever is offered to you.

Q Can you tell us whether or not the situation in Ecuador differed from Guatemala, for example?

A How did it differ from Guatemala?

Q Yes.

MR. BENDER: What year.

Q Let's talk about this transitional period in the early '60s before you went commercial with the variety banana

Let's first take the agronomic conditions in Ecuador.

A Well, let's take the year 1960 but it would be true of any of the years that I was there with the company.

It's a very different picture because the government in Ecuador supports the banana business. The government provides spray services, the government builds roads that go back into areas that show they can produce bananas. The government builds the port. The government does all those things for the grower that we had to do on our own if we were opening up our own division somewhere.

THE COURT: Who runs the railroad in Ecuador?

THE WITNESS: There is no railroad involved.

THE COURT: All trucking?

THE WITNESS: All trucking. There may be railroads in Ecuador but none I know of that brought bananas down to Guayaquil.

Q How did the agronomic conditions in Ecuador compare to Guatemala?

A The soil was good, the rainfall was plentiful. They didn't have to do any irrigating that I know of. They had only one--they had one problem and one advantage. They, too, had Panama disease, but it did not increase very rapidly and it caused them very little trouble, even if it did, because they had absolutely unlimited land they could expand to and the Government would put in the roads to reach those lands.

They had one cloud cover problem that slowed down the growing of the bananas in, as I recall, the third and fourth quarters of the year. The sunlight wasn't very regular during those last months of the year, which took the banana longer to mature. We called it stale fruit, although it still looked green and fresh, but it had been on the plant too long. This caused them a minor problem. It wasn't major and it never interferred with the quantity of bananas

available, but it was a problem that was there and we talked about it frequently.

Q Was there a wind problem in Ecuador?

A Oh, probably. I never knew a banana division that didn't once in a while have a wind problem. I assume they had it. It did not interfere or cut down in any way the supply because they produced more than twice the bananas that they ever shipped. No wind storm would ever interfere in any measurable degree with the supplies available in the port.

Q Were the winds as severe as they were in Guatemala?

A No, as far as I know, they were not.

Q Mr. Bender asked you a question about the drop in prices and you said that was from competition.

What was your competition in or about 1960 when you started with the company?

THE COURT: Competition where, Mr. Klingsberg?

MR. KLINGSBERG: Competition for sale of bananas in the United States?

THE WITNESS: The biggest single competitor was an organization known as Standard Fruit Company with headquarters in New Orleans. There were four or five, maybe six, major importers from Ecuador alone. Their names escape

me but one of them, the biggest, was called the Ecuador Fruit Company, I know.

There was a company called the West Indies Fruit Company that had some Ecuador production and I believe they picked up some independent contracted production in the Limon area of Costa Rica, and they may have gotten miscellaneous amounts of bananas other places.

I remember their name.

There were a number of people. There was a man named Consolo, who was in and out of the market a good deal. The presence of Ecuadore made it possible for many of these people to be in the market when prices were good and to drop out when prices were not good because they had no investment in Ecuador, it was just a buying operation and all they had to invest in was a charter for a ship to go in and pick up the bananas and bring them back.

Q How did the costs of these people compare with your costs in places where you had hospitals and schools and expansion of land, et cetera, because of Panama disease?

MR. BENDER: I object to that, your Honor.

THE COURT: Sustained.

Q Did these independent importers often underprice you?

A Yes.

Q What advice did you receive as to the reasons, if any, why they were able to underprice you?

A We bought in Ecuadore too. We knew what the pricing situation there was and we could buy bananas more cheaply there than we could produce them in many of our own divisions.

Q Why was that?

A For the reasons you outlined. The costs that were pricing us out of the market were all absorbed by the Ecuador Government.

The independent buyer bought free of all these charges.

Q Did Standard Fruit have any plantations such as you had in various places in Central America?

A Yes, they had a plantation in Guatemala right near our Tiquisate Division, they had one at La Ceiba, Honduras, which was not far from our Honduras Division. I believe at times they purchased some bananas in the Limon area of Costa Rica, but it was spasmodic and they had a big operation in Ecuador.

Q What about the jobbers? Did the jobbers have any influence over the price of the bananas?

A They set the price. It was the jobbers who bought bananas in the port when our ship arrived.

Q How did the jobbers set the price?

A By telling us what they would pay for bananas. If we weren't willing to sell to them at the price they quoted, then the bananas had to go on the rail cars and become what we call roller and we rolled those bananas on the rail tracks out into the countryside of America, trying to sell at every cross roads and get what we could for them. The presence of the roller showed we were not able to sell bananas at a price that we thought adequate at the port to the jobbers.

QWere there times when the jobbers refused to pay the price that you desired?

A Oh, many times.

Q On these occasions, did the jobbers act individually or did they all refuse?

A Frequently they all refused. I can't say that I know of my own knowledge that there was collective action, but it certainly looked like it at times.

MR. BENDER: I object, your Honor.

THE COURT: Strike it out.

Q Did United Fruit Company, during the period 1961 through 1965, have the ability to control the price of bananas?

MR. BENDER: I object to that, your Honor. That

calls for a conclusion.

THE COURT: I think if you ask him a series of questions I will allow it, instead of conclusory questions.

MR. KLINGSBERG: I think I covered the underlying material so I will pass it.

THE COURT: Let it go.

Q Mr. Sunderland, you mentioned the fact that one of the things you could do something about was your cost.

What, if anything, did you do during this period in the early sixties while you were developing the variety banana in regard to costs?

A The first act was to appoint a general manager in the Tropics. We had not had a general manager for many, many years and all decisions from individual divisions in the Tropics had to come to Boston for decision. I appointed a general manager with power to decide most problems on the spot and for the additional purpose of bringing to each division the cross fertilization that would come from knowing what other divisions were doing with similar problems.

I asked the general manager to make a careful review of everything we were doing in all divisions with an effort to cut our costs, and he came back to me within four or five months, approximately, with a report that on an annualized basis he had been able to cut about $8 million

out of our expenses. That is annualized. That wasn't going to happen in 1960 and it might not even all happen in 1961, but that was the measure of what he had done.

Q Was this a company-wide program?

A It was.

Q Was part of that program directed to Tiquisate?

A Yes. It was directed to all divisions.

Q Was that program directed towards going out of business in Tiquisate?

A No, this is cost reduction to stay in business.

THE COURT: What kind of items did you cut?

THE WITNESS: We changed our spraying techniques from on the ground to aerial, we changed the type of spray, which we found had been cutting down on the production. In addition to killing off the bugs, it was killing off the bananas, too.

There were large savings possible by consolidation of spare parts and keeping an overall inventory of what division might have pipe or rail or hose or whatever it might be needed instead of each division carrying enough to carry them through.

You must remember that in these areas, if a tracter became incapacitated, that tractor was out of business until a ship could bring parts from the tractor factory in Detroit or wherever it might be and that tracter and the farms dependent on it might be in trouble for a good many months, so that we kept about a hundred percent part list to

to make sure that whatever happened we would have parts for it and by consolidating those depots and keeping a consolidated inventory of parts, we saved a great deal of money.

Q Did you also take any action in regard to the number of employees which you had in the various divisions?

A Oh, yes.

When I went to the company, I think we had in the neighborhood of 70 or 80,000 tropical employees and my recollection would be we cut ten or 15 or even 20,000 out of that number.

Q Was this also a company-wide project?

A Oh, yes, all of this was company-wide.

Q What, if anything, did you do in regard to your capital expenditures during this transitional period?

A We tried to spend enough to keep in business, not spend so much that we would find we had wasted money when we knew the answer to our proposed program of variety bananas, boxing and labeling in the tropics.

Q In this connection, did you do anything, or institute any programs or attempt to institute any programs regarding the use of associate producers?

A Yes. When I arrived at the company the pressure on American companies to get into some kind of partnership

arrangements with Nationals in the various countries of Latin America was very great, very intense. The countries themselves wanted it, the American State Department wanted it and as a large employer of labor in Central America, and as a larger owner of land, we received great pressure from both the countries and our own State Department and our response to that was to increase our associate producer programs.

Q You mentioned that this worked particularly well in Columbia.

Did it work equally as well in all countries?

A It did not. It worked in various ways in various countries. In some countries it didn't work very well at all.

Q In what countries did it work well?

A Colombia was, I think, the best example.

We had less spectacular success in Honduras, we had reasonably good success in Golfito. Guatemala was fair; not as good as Colombia.

Q Did you run into any particular problems in regard to instituting an associate producer program in Guatemala?

A I don't know. If you can tell me what area of our relationships with associate producers you are after, I can perhaps help you.

Q I show you Defendant's Exhibit 477 in evidence, which is a memorandum from Mr. Van Diepen to you, dated--what is the date on that?

A Dated August 5, 1960.

Q And ask you if that refreshes your recollection as to particular problems you ran into in Guatemala with the associate producer program?

A Yes. This problem referred to in here, which I will describe in a minute, affected not only associate producer, but also affected our company operations.

The memorandum refers to the marshal law which had been recently decreed in Guatemala and also made reference to the fact that the union--and this is important, I'm glad I'm reminded of this--make sure of the fact that the union there was trying hard to block the associate producer program because they were convinced that the employees would not be paid as well by the local owner of a plot as would be paid by the United Fruit Company, and there was no question that our wage rate was higher than any other employer--national employer in the country.

Q Did the success or failure of the associate producer program in the various countries also have any relationship to the problems, the agronomic problems of bananas there?

A You also had to be careful of several things if things if you went into an associate producer program.

By far the largest number of associate producers did not take care with the banana cultivation that we would take. They would not do the spraying, they would not try to keep disease under control the way we would, and ever so often we would find that despite our best efforts there would be a small block of bananas with bad infections that would get loose into our big plantations and through no fault of our own we would have serious trouble because the associate producer had not handled his the way he should have.

Q You mentioned Sigatoka, did you?

A All disease. Sigatoka is probably the most spectacular because it is a wind-borne disease and all it takes--it doesn't have to be any heavy wind at all, just enough of a wind to carry particles in the air will spread Sigatoka from the leaves in the infected plant in the associate producer plantation into our big plantation and once you get it into the big plantation you got trouble.

There are other diseases carried by insects and while they go a little more slowly, it is basically the same problem.

Q Now, you say Sigatoka you could control, at least in part, by spraying, is that correct?

A That's correct.

Q And did that differ from Panama disease?

A Yes. There was no cure for Panama disease. Once ground was infected with Panama disease, you had to just walk off and forget it. There was nothing known and still is nothing known as a cure for Panama disease.

Q Was the extent to which you could succeed in an associate producer programs affected by the extent of Panama disease in a particular area?

A Yes, indeed. If a plot owned by an associate producer became infected with Panama disease, he was out of business and this is one reason many of them were not at all anxious to get into the associate producer business.

Q What about blow downs?

MR. BENDER: I object to that, your Honor.

I move to strike the last part of the answer. It was not responsive.

THE COURT: That they couldn't get into it?

MR. BENDER: Yes, your Honor.

THE COURT: All right, strike it out.

A What is the question again?

Q The question is, did blow downs affect your ability to engage in associate producer programs in various places?

MR. BENDER: I am going to object to that, too, your Honor. That is very general and covers the whole world.

THE COURT: Overruled.

A Yes. That was a very major subject of discussion every time we went into an associate producer program. The associate producer wanted to know who bailed him out if he had a blow down, who bailed him out if Panama disease got started, who bailed him out if Sigatoka cut down his production, and what we tried to explain to them was that this was the joy of free enterprise where they could make big profits and by the same token had the right to lose some money once in a while if things went wrong.

We frequently had trouble selling that concept. They would rather the United Fruit Company picked up the loss and that meant that they would have to be an employee.

Q During your trip in January of 1960, which you described this morning, did you learn anything concerning the land situation in Central America, particularly in regard to Governmental action and things of that sort?

A Yes.

At that time there was quite a rash of legislation in many of the Central American countries for the expropriation of foreign-owned properties and the redirection of it to nationals of the country. The emphasis varied from

country to country, but in all countries they were particularly insistant upon taking property not then in productive use, and the areas that we had reserved for expansion when driven out of other places by Panama disease were under considerable attack by these Governments for redistribution.

We would try to explain the need to keep these if we were going to stay in business in that country because the sureness with which Panama would drive us out of the areas then in cultivation was absolute and without some placing together, without some area to expand into, that entire operation would have to come to a standstill if we didn't keep these reserve lands.

Now, we made them partially productive by having cattle on them, we sometimes grew cocoa and sometkmes it was just woodland or pasture.

Q Did you undertake any programs as a result of this situation in or about the early part of 1960?

A Yes, we had a review of all of our land holdings throughout Central America. We tried to reappraise the need for some of the surplus lands we had.

In the early days when these lands were absolutely valueless, it was very easy for predecessors of ours to take very large quantities of land knowing that sometime we might need it. We tried to bring that down to date. Wherever

we thought there was extra land that we might not need in the immediately foreseeable future, we would try to work out a deal with the Government to sell it to them, occasionally we had to even give it to them, but the whole program was to relieve the pressure that we were getting from both the nationals of the country and our own State Department.

Q Did this land sale and land review program apply to the Tiquisate area?

A It did, indeed. It applied to all of our divisions

Q Did you undertake land sales in almost all of your divisions?

A We did.

Q Was this done in order to go out of business?

A No, this was to keep the government off our backs so that we could stay in business.

Q Now, sir, after about a year of your program of research and development and experiementation, coming to the early part of 1961, can you tell us approximately where you were at in terms of your decisions on the Valery banana and the Lacatan banana and so forth?

In this regard you may look at the 1961 report to shareholders, which is Defendant's Exhibit 469 in evidence to refresh your recollection if you need to.

A Before examining the report, I can tell you in general terms that we were proceeding with our -- just as far as we could with our plannings of variety bananas. By this

time it was mostly the Valery. We had concluded the Valery was the better banana and we are not expanding the Lacatan.

Q Now, in or about this period of time, did you also conduct inquiries in the regular course of business as to where was going to be the best place or places to grow this new Valery banana?

A Yes, I did. This went on almost continuously over a long period of time for a very good reason.

If the Valery banana proved to be as all the research data had indicated, if it proved to be immune to Panama disease, then we no longer needed larger areas to expand into, no longer needed large areas of virgin territory to expand to when Panama disease drove us out of current cultivation. If so, that meant we could go back into areas that we had abandoned once for Panama disease reasons, we could go back close to the port facilities, where our original plantations had been located, and we would not need to keep expansion territory because there was nothing to indicate that we would be driven out of those lands again.

The only disease that we couldn't handle was the so-called Panama disease, and that was a terrifically expensive disease because we had to abandon all fixed installations when we left the place, and it looked as though, and subsequently proved to be true, that goingback in there

with a variety banana, we could use those very fertile lands, and the fertile territory was not in the slightest effected by Panama disease, it was only a very small microscopic organism that effected the roots of the banana plant.

For those bananas that were immune to that disease they grew beautfully in these areas, and we concluded as we became more and more convinced that the Valery was working, we became more and more convinced we had more lands than we needed and we started a program of selling off the lands not needed. And this, of course, was also in response to the government pressures I was talking about.

Q How about the yield of the Valery banana compared with the yield of the Gros Michel banana? You don't have to give me exact numbers.

A Well, I can be reasonably specific about it.

In our early stages of development, we thought we would get between two and three times as much production per acre from the Valery as we would from Gros Michel. It turned out that we were conservative.

THE COURT: What?

THE WITNESS: We were too conservative and it turned out we got almost four times as much production per acre from the Valery banana than we did from the Gros Michel.

MR. BENDER: When are we talking about?

THE WITNESS: I am talking about all times that I was with the company.

Q What branches of your company did you ask to participate in these studies about the best place or places to grow the Valery banana?

A My method of operation was to form a management committee consisting of the heads of all the important departments in the company. That would include the head of the agricultural division, sales, water transportation, accounting and law. Those people met with me regularly.

One of the problems that the United Fruit Company had had before I came was a matter of communication within the company. The sales activities had been located in New York, the corporate headquarters were in Boston, a lot of the activities were down in New Orleans and there were other activities in the tropics and there was very little communication.

So I brought them all to Boston and all these decisions were made with all parties joining in so that we weren't overlooking some aspect that otherwise might be overlooked.

Q In or about the first half of 1961, did you receive reports as to the best and worst places to grow the Valery

banana?

A I had many, many reports, oral and written. It was the one consuming set of inquiries that I was making at all times, because I was pretty sure that on the decision to grow the Valery banana depended the future of the company, and if it didn't work then we would have to become just, in effect, a shipper who bought in the open market in Ecuador and other places and transported to the United States.

Q Where did Tiquisate come in in these reports?

A It was analyzed along with every division. We would analyze soil conditions, climate conditions, government and political conditions, the quality of the fruit that we got, the costs in producing that fruit.

There were a whole range of very obvious things that you would study to find out where was the best place to grow the banana under a new set of rules, because if the Valery was going to work, and it had proved that it was going to work, then the old rules no longer applied and we could think about going back into areas that had been absolutely abandoned before because of Panama disease.

Q Of all of your various locations and divisions that were studied, which was the worst place that you and your staff concluded was to grow Valery bananas?

A Tiquisate.

Q I would like to show you Defendant's Exhibit 189 for identification, which had been previously submitted for identification as Plaintiff's Exhibit 623 but we remarked it since we are offering it, which is a memorandum from Mr. Miller to you, dated March 9, 1961, with attachments, and ask you if that comes from your files?

A It does.

MR. BENDER: When you say his files, do you mean his personal files?

THE WITNESS: It did come from my personal files, yes. My personal files at the company.

Q Was this one of the documents which you considered in connection with the determination of --

THE COURT: Do you have one for me?

MR. KLINGSBERG: Yes, your Honor (handing).

Q -- which you considered in connection with the determination of where to implement the planting of Valery bananas?

A This report was considered with great care a number of times and it reinforced conclusions that had been given to me orally before, but this attempted to bring into one memorandum all the various considerations and this was the thing I think on which we based our final action as much as anything.

Q Did you regularly receive reports concerning the various factors concerning where to grow bananas?

A Yes. All of these factors were included one way or another in reports I got.

This was one of the first that brought all of these related things into one piece of paper.

Q Was it the regular course of business of United Fruit Company to make reports such as Defendant's Exhibit 189?

A Oh, yes.

Q Was it the regular course of business of United Fruit Company to keep exhibits such as Exhibit 189?

A It was.

(Defendant's Exhibit 189 was received in evidence.)

Q Mr. Sunderland, there are various factors considered on page 2 of Defendant's Exhibit 189 in evidence. The first is total landed costs.

What does that mean?

A That is the cost of delivering the fruit to a port in the United States.

Q And how did Tiquisate come out in comparison with the other divisions in this respect?

MR. BENDER: I object to this inquiry, your Honor. It's all in the document and the document speaks for itself.

THE COURT: There are underlying questions that have to be answered.

For example, when he talks about landed costs in the United States, at what freight rate on the IRCA was that determined? Was that on the $130 new rate or the old rate?

This is now done on March 9, 1961.

THE WITNESS: This was at the actual rate, your Honor.

THECOURT: What was the actual rate?

THE WITNESS: $130 a car, as I recall.

THE COURT: All right.

Q Did you answer the question?

A I don't believe I have.

We have six divisions with the names across on the table, and we gave a numerical value of 1 through 6, 1 being the best landed cost on down to the one with the highest landed cost. Tiquisate was the highest landed cost of any of the divisions.

MR. BENDER: I didn't hear the last part of the answer.

THE WITNESS: Tiquisate had the highest landed cost of any of the divisions.

Q What is the Tiquisate landed cost for shipment through Barrios according to this exhibit?

A It will take me a minute to pull this out of the tabulation here. Here we are.

The total cost per 100 pounds for Tiquisate was $4.909 cents.

Q How did that compare with the best division?

THE COURT: With the what?

MR. KLINGSBERG: With the best division.

A The best division was Armeulles, having a cost of $.154.

Q The next item is new monies. What does that refer to?

A Monies required to get into bearing the number of acres being studied.

Q Where did Tiquisate come out on that?

A For new monies, Tiquisate was fourth.

Q The next item is soil. What does that refer to?

A The composition and character of the soil in which the bananas would be grown, the fertility of it. Implicit in this is the amount of fertilizer that might be required.

Q Where did Tiquisate come out in that regard?

A It came out sixth.

Q Were you advised by your agronomic assistants as to any particular factors in the Tiquisate record that affected the Valery banana?

A We had extensive discussions of it.

MR. BENDER: I will object to the discussions, your Honor. I think we should have reports, if anything, in connection with this rather than just something orally said with respect to this item. This is over ten years ago, your Honor.

THE COURT: It would be better if you have the reports. But I think what he is doing is asking him about the first page as to soil,"classified as first-class banana land based on texture and depth."

I suppose he is trying to find out what he knows about texture and depth, which I know nothing about.

MR. BENDER: I thought he went beyond that, your Honor.

THE COURT: I don't know. That is what I was guessing because I had noticed that and I didn't know what it meant. Texture I could understand but not depth.

A The texture of the soil in Tiquisate was somewhat different from the testure of the soil in places like Honduras and Almirante. It was more volcanic in origin, meaning it was more porous and did not hold the water as well, which required more irrigation at times. The depth referred to the depth of top soil.

THE COURT: That is blown away in a hurricane?

THE WITNESS: Yes.

A (Continuing) I just know that Almirante, Honduras, had top soil two and three times as deep as the top soil at Tiquisate. I would not be able to give you a figure on that, but it was far, far more top soil.

Q And you mentioned this morning, I believe, that the Valery had shallower roots than the Gros Michel, so this was a factor, was it not?

A It was a factor, indeed.

Q The next item is minimum temperatures and other growing conditions.

What did you interpret that to mean?

A Well, the first page explains that, too, to some extent. "Low temperatures that could cause chilling and other inclement weather affecting normal maturity of fruit."

Q Tiquisate came out fourth in that. How did you interpret that result?

A Well, as a matter of fact, it was a fact that I observed when I was there on my first trip. The growing conditions at Tiquisate were reasonably good when I was there and when I got over to Bananera across the mountains, also in Guatemala, it was very cold, so cold we were getting damage to the fruit overnight from the cold spell. In these two numbers Tiquisate is rated number four and Bananera rated number six, and I think they reflect, at least partly, the condition I have just mentioned.

The other growing conditions would include, of course, moisture, and Tiquisate did not have quite the evenness of rainfall that we got in other divisions. To the extent it affected it, it did not overcome the disadvantage that Bananera had in some of these respects.

So it turns out to be a medium division so far as minimum temperatures and other growing conditions are concerned.

Q In regard to this item, minimum temperatures, did you interpret that to mean the temperatures at Tiquisate

itself?

A I was talking about that. There is a temperature problem I referred to earlier in shippping bananas across the mountains from Tiquisate over to Puerto Barrios for shipment in our ships, and taking the fruit at tropical temperatures, hot, 80, 90 degree temperatures, transporting them over the mountains where it was cold, not necessarily cold enough to freeze it but cold enough to chill the fruit, and then taking it back down to sea level and again the very hot, humid conditions of a seaport in that area would cause problems in the ripening of the fruit.

Q How did that particular factor affect the Valerys compared with the Gros Michel?

A The Valery was much more susceptible to that sort of thing. Greater damage could be done to the Valery than to the Gros Michel.

Q Is there any category on this table which you would interpret to include that factor?

A No. This would be the one I guess that would have it. This was the only division where we had that problem and it would be a little bit silly to rate everything number one, because nobody had that problem across the mountains.

Q Would that be an added factor?

A Yes, this was in our thinking at all times. It doesn't happen to show up in this table.

Q The next item is wind damage. What does that refer to?

A Two things. First of all, blowdowns, and secondly, whipping of the leaves in a wind that is not severe enough to blow the plant down.

Q What does that do?

A If a leaf is shredded by the wind, these are great big leaves, not too strong, and if a wind shreds it, as can happen with a relatively moderate wind, the leaf then becomes a less efficient mechanism for producing a banana plant, a banana bunch, and it takes the bunch longer to mature on the stem than would be the case if the leaf had stayed at its full potential.

There was a third affect. Occasionally you would get scarring on the fruit by the wind blowing the leaf against the tender young fruit and it would make a mark. It would not produce normally a bruise that would be rotten but it would make a mark that would make the fruit a little less marketable in the market, visual. rejection.

Q The next item is expansion potential. Tiquisate came out number two on that.

How important was expansion potential in terms

of the growing of the Valery?

A Despite our belief that the Valery banana was such that we would not require expansion, all ofus in the back of our heads were prepared to find some day that we had overestimated this and the possibility of expansion was always studied even though we were morally certain it would not be necessary. But it was something that we couldn't completely overlook because it could be that our experiments would turn out to not be indicative of conditions under full plantation size development.

Q Relative location. Tiquisate came out sixth and Bananera first. Why was that?

A I suspect this thing -- in fact, I am sure this is what you were asking me about. Transportation over the mountains to the eastern side of Guatemala is reflected in that figure more than the minimum temperature figure. Tiquisate you see was 300 odd miles from the port and we didn't have any other division that was more than just a handful of miles from the port. In fact, the whole purpose in -- one of the main things we looked for in locating a division was easy, quick, immediate access to deep water.

Q The next item is political climate. Tiquisate and Bananera came out tied for fourth and Honduras was sixth. What were the underlying facts there?

A My own evaluation would have been slightly different. I would have ranked Honduras a little better than Guatemala, but at the time this memorandum was prepared there was a very serious proposal in the legislature in Honduras to expropriate foreign-owned properties. Our information from the tropics made it seem very serious and that, I am sure, affected all of us in considering the report at this time and we did not rate either of the Guatemalan divisions quite as bad. The fact of the matter isover a longer period of time Guatemala was usually worse in its political climate than Honduras and you had the things that I think have been testified to here before, thatpeople were being killed, there was a bloody --

MR. BENDER: I object to that. The witness is referring to events that took place after 1961 in relationship to something that was supposedly done in 1961.

THE COURT: That's how you project future events by history to some extent.

MR. BENDER: By now taking his hindsight and reading it into this chart?

THE COURT: No. What he is trying to say is in 1961 he recalls that people had earlier been killed and he would have rated Guatemala lower on the political climate scale.

Is that what you are trying to say?

THE WITNESS: Exactly.

THE COURT: That is what I thought he said.

Q Were there in fact subsequent events which led you to reconsider the rating of Guatemala concerning political climate?

MR. BENDER: I object, your Honor, unless we have that pinned down in time.

THE COURT: Yes, I think he is entitled to that.

MR. KLINGSBERG: We have in evidence, your Honor, a number of documents which have been admitted and I won't take up the Court's time.

THE COURT: I think it would be better to proceed by a series of specific events and then get comments from Mr. Sunderland about those events.

I will allow a general question about whether the political climate got better or worse after 1961, and then from then on, no matter what answer you get, you can then probe further on specific events, if any. I don't know.

MR. KLINGSBERG: Thank you, your Honor.

We will put the documents together and come back to that.

THE WITNESS: To answer your Honor's question, it got worse.

Q Now, thereafter during 1961, did you continue with your research on the Valery banana and on the boxing question?

A We did.

Q Despite the rating of Tiquisate in Defendant's Exhibit 180, did you in March 1961, decide to close Tiquisate down or did you continue to operate the plantation?

A We continued to operate it throughout until the final decision was made to close. We even built some experimental boxing stations in Tiquisate.

THE COURT: Somewhat?

THE WITNESS: Experimental boxing stations.

A And we did a good deal of work in experimenting with cocos banana which was the low growing Gros Michel banana.

Q Was the Cocos resistant to Panama disease?

A No, it was not, but it was low growing so we lost somewhat fewer plants when there was a high wind.

Q Did you run into any particular problems with your boxing in Guatemala?

A Yes. The Guatemalan Government refused to let us import the materials to make boxes. So that handicapped us very severely.

Q In 1961, was your accounting staff reporting to you concerning the cash flow situation in Tiquisate?

A Yes.

Q And what effect did that reporting have on your thinking concerning the continued operation of that division?

A Well, I looked at cash flow figures, earnings figures and production figures from all divisions regularly. As Tiquisate got nearer and nearer to a negative cash flow, it became obvious that we would have to make a decision one way or the other on Tiquisate until it finally reached a red figure and we were losing more money by operating it than by

closing it down. Until then we kept it going, but I didn't feel that we were justified in keeping the division going where even the cash flow was negative.

Q According to Defendant's Exhibit 222 in evidence, which is a report to you from Mr. Carpenter--who is Mr. Carpenter?

A He was our financial Vice president.

Q --to you dated October 2, 1961, the revised sales estimates indicated that any cash loss during 1962 should be relatively small, referring to Guatemala West.

Based on that report in October, 1961, what, if anything, did you decide to do concerning the continued operation of Tiquisate in 1962?

A I had determined early, and had told the Board of Directors, that I would try to keep Tiquisate going as long as there was a positive cash flow from the division, and this report, which I remember, led me to believe that we could keep it going throughout '62.

MR. BENDER: What is the date of that report and the exhibit number?

THE WITNESS: October 2, 1961. It is Defendant's Exhibit 222.

[DIRECT EXAMINATION BY MR. KLINGSBERG, CONT'D:]

Q Mr. Sunderland, you testified yesterday that based on Defendant's Exhibit 222, which was the report from Mr. Carpenter dated October 2, 1961, to the effect that the cash loss during 1962 should be relatively small, that you planned to continue your operations at Tiquisate through 1962, do you recall that?

A I do.

Q And in that connection, did you authorize expenditures for the construction of a boxing station?

A I did. I presented it to the Board at the March 26, 1962 meeting, and the Board of Directors authorized an advance of $50,000 requested by the Tiquisate Division for construction of a boxing station.

Q Did you also authorize expenditures for planting Cocos bananas in the Tiquisate area in 1962?

A I did.

At the April 18, 1962 meeting the directors authorized me to advance $75,000 to the Tiquisate Division.

MR. BENDER: I have no objection to the witness reading from documents or looking at documents and then testifying, but I think the record should indicate that. He is reading from specific exhibits that I have no objection to and I think it would make the record clearer if it was indicated what documents he is looking at in connection with his testimony.

THE COURT: What I assume is in a sense it is past recollection recorded and he is using it to refresh his memory.

MR. BENDER: I have no objection.

THE COURT: I suppose if you are reading a passage you can say "I quote" and that will make the record

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clear.

A To make the record clear, the $50,000 appropriation for a boxing station was authorized by the Board on March 26, and I have in front of me a memorandum quoting the resolution of the Board and I sent a copy to Mr. Miller, who was head of our Agricultural Department.

My second testimony about the $75,000 appropriation for planting Cocos bananas in Tiquisate is based on a quotation from the resolution of the Board of Directors passed April 18, 1962, and I have a copy in front of me, as I testified.

MR. BENDER: What are those DX numbers?

MR. KLINGSBERG: Defendant's Exhibit 261 and 264.

Q Mr. Sunderland, in the course of the operations of Compania Agricola de Guatemala, did that corporation as such and its own board of directors, make requests for authorizations of this sort?

A It did. It had its own board of directors and it made its own requests.

THE WITNESS: Your Honor, when I refer to the Tiquisate Division, that is another way of saying this long Spanish name.

THE COURT: CAG, you mean?

THE WITNESS: Yes.

THE COURT: When you say division, you also mean a subsidiary?

THE WITNESS: A subsidiary corporation that ran that division.

THE COURT: CAG?

THE WITNESS: Right.

Q Did CAG substantially cease its operations during 1962 or did operations continue?

A Oh, operations continued.

Q Were these operations affected by blowdowns?

A Yes, blowdown was a continual problem at Tiquisate.

Q Would that affect the amount of the production coming out of Tiquisate in this period?

A Very definitely.

Q Were those operations affected by Panama disease?

A Definitely.

Q Did Panama disease affect the amount of production coming out of Tiquisate in 1962?

A Very definitely.

Q Yesterday his Honor suggested that I may ask you an introductory question in regard to the political situation in Guatemala.

Do you recall your testimony in regard to the document where the two Guatemala divisions were listed as number four and Honduras was number six and that was as of March 1961?

A Right. You are referring, of course, to our evaluation of the political climate in those two countries?

Q Right.

A Right.

Q Did you regularly receive reports from personnel in Guatemala reporting on the political situation there?

A Yes, indeed.

Q Did you consider those reports in assessing how you were going to proceed in developing your Tiquisate or your Bananera plantation?

A Of course.

Q Did the political climate after March, 1961, get worse or better?

A It got worse.

Q I show you Defendant's Exhibits 236, 237, 238, 244, 245, 246, 247, 248, 249, 250, 251, 259, 264, 270, 269, 266, 268, 271, 273, 301, 303, 302, 339, 325, 326, 323 and 322 and ask you if these are telegrams which you received reporting on the political situation in Guatemala during 1961 and 1962 but following the March, 1961, evaluation about which you testified yesterday?

A I have looked at all the exhibits you have shown me. They consist of a series of telegrams over a period of several months recounting a whole series of situations that shows a rather chaotic condition in Guatemala.

People were being gunned down on the street, there were strikes. We had a man kidnapped, we had our office broken into and the safe rifled. There were student demonstrations, there was martial law declared. There was a whole series of things I can elaborate on but it all added up to a very chaotic political situation and one that was very difficult for us to keep in business.

Our telegraphic communications were cut off, our trains for transporting fruit were interrupted. We had a very difficult time.

Q I show you Defendant's Exhibits 205 and 212, also dated May 11, 1961, and July 13, 1961.

What happened to your labor relations man in Tiquisate in 1961?

A My memory is refreshed by DX 205, a telegram telling me that our labor relations man in Tiquisate was shot and killed in the company office that day. A man invaded the office and killed him at his desk.

THE COURT: In Tiquisate?

THE WITNESS: In Tiquisate.

A I am further refreshed by DX 212, a cablegram dated July 13th, telling me that the government had imposed a state of siege for 30 days suspending all constitutional guarantees because of an uprising the day before.

Q And did there come a time in or about February 6, 1962, when one of your employees was taken prisoner in Guatemala?

A There was, and Defendant's Exhibit 238 is a copy of a cable I received telling me that a group of 60 civilians had captured a military detail and taken the office of the United Fruit Company in the Isthmus of Guatemala and robbed our cashier's safe and took as a prisoner Mr. Richards who was our cashier in Bananera. At the moment I don't remember how long he was held a prisoner but they had him

for a measurable period of time.

BY MR. KLINGSBERG:

Q Now, how did these events affect your thinking in regard to the comparative position you would place Tiquisate as compared to your other divisions in regard to the decision where was the best place to grow the Valery bananas?

A These are illustrations of the events which led me yesterday in my testimony to say that personally I would have evaluated Guatemala as the company having the poorest political climate -- the worst political climate for a company to do business.

I think it was much worse than Honduras. It obviously is a very important fact that has to be considered when you are deciding where to concentrate the new business that you are trying to create.

Q Is it a fact that eventually it was decided to develop the Bananera or the Guatemala East Division for growing the Valery bananas?

A We did eventually decide to do that.

Q Did Guatemala East Bananera become your Valery production area?

A It became a very good division.

Q Will you explain to his Honor why it is despite all of these events which you briefly summarized from the exhibits in evidence you continued with the development of

Guatemala East?

A Well, history had shown us that over the years it was wise not to have too many eggs in one basket and that conditions could change. We tried to keep from having two divisions in a single country if it could be avoided.

At the time I came in we had two divisions in two different countries. Guatemala had two divisions, one Tiquisate, the other Bananera, in Panama we had two divisions, one was Armuelles and the other one was Almirante.

Panama was a much more stable country and while I was worrying about the two divisions there, I was confronted with that fact, they were there, and there was no evidence during the time that I was in office that the political climate in Panama would make it impossible or difficult or dangerous for us to maintain two divisions there.

Guatemala was to the contrary. Throughout the time I was in office we had problems of a political nature, we had union problems. There were a whole series of problems in Guatemala and it seemed to me for quite some period of time that we had too many eggs in the Guatemala basket.

Q Was there anything in these events which you have summarized which would affect your thinking on Tiquisate differently than your thinking on Bananera?

MR. BENDER: Are you asking him about his present

thinking? I object, your Honor.

MR. KLINGSBERG: No, I am asking about his thinking in 1962 and 1963, when these events occurred.

A Well, there is a very obvious difference in the geographical situation of the two divisions.

Tiquisate had no commercial communication with the outside world, except through a long rail haul across the mountains to Bananera.

Bananera, on the other hand, was right on the oceans and our ships came in there, we had regular communication. We could operate a great deal more freely there than we could off at the end of the IRCA railroad line in Tiquisate. So there were many differences and the advantages were all on the Bananera side and the disadvantages on the Tiquisate side.

THE COURT: But didn't you have to ship by rail from Bananera to Puerto Barrios?

THE WITNESS: Very short --

THE COURT: A short run?

THE WITNESS: Oh, yes.

THE COURT: I thought you said now you had a port there. You had no port there?

THE WITNESS: Oh, yes. We could have taken it over by truck if we wanted to. We had a contract --

THE COURT: But you still had to go to Puerto Barrios?

THE WITNESS: Oh, yes, but it was right there.

THE COURT: I just want to get the facts here.

THE WITNESS: Yes. It is very close. I can't tell you how many miles. It's very close.

Q Coming to the early part of 1963, did you continue to get reports from your various personnel concerning this project that you had instituted on the development and commercialization of the Valery banana?

A Yes, indeed.

Q Was it ascertained, for example, whether the Valery banana was completely blowdown resistant?

A No, I --

MR. BENDER: What period are we talking about?

MR. KLINGSBERG: Early 1963.

A The blowdown situation is as I testified yesterday. The low-growing plant, which the Valery was, did not blow down as easily as the much taller plant, which we had with either the Cocos or the Lacatan. This does not mean it was immuned to blowdowns. You could have winds that would blow down any kind of a banana plant, regardless how short it might be, but the amount of losses from blowdowns with the low-growing Valery were substantially less than with the

taller-growing plant and substantial to the extent that it would make the difference many times between a profitable division and a non-profitable division.

Q Who is Mr. Van Diepen, who is the author of Defendant's Exhibit 328 in evidence?

THE COURT: That is in the record. He is the manager of the Tiquisate Division.

MR. KLINGSBERG: No, at this time.

THE WITNESS: His role changed.

THE COURT: Excuse me, go ahead.

A Van Diepen was the manager of the Tiquisate Division when I made my first trip to Guatemala.

He later came to the Boston office and became our vice-president in charge of research.

THE COURT: When was that?

THE WITNESS: Probably 1962.

Q Now, there was a Valery seedbed in Honduras, was there not?

A There was.

Q How long had that Valery seedbed been in Honduras?

A Honduras had been the center of your research activities for 30 or 40 years and in these research farms that were maintained there we had planting materials that had been brought back from all portions of the globe.

We had scientists making round the world trips to get new planting materials, new types of bananas hoping by cross-breeding or by luck finding a strain of bananas that would do things that currently known strains did not do.

The Valery seedbed had been established probably 25 years earlier and planting material comprising the Valery seedbed had come from a place that has since obtained a lot of reknown, it came from Saigon and the jungle areas back in Saigon and then Indo China.

The seedbed had been grown there and watched for over the 25 years, but no attempt had been made to expand that banana or any of the others in that plot into commercial quantities.

Q Now, were Valery bananas subject to other diseases, such as Moko disease or Sigatoka disease or Nematodes?

A Yes, they were, but the one disease that we could not handle and the one disease that was putting the company out of business was Panama disease.

Q Was there any problem in transporting the seed from Honduras to other places?

A The problem revolved around the country to which the seed was being transported. There were very stringent restrictions in Guatemala against bringing in seed from other countries unless you left the seed in a quarantine

seedbed in Guatemala long enough for the Guatemalan government to make sure that you were not bringing new diseases into that country.

Q In or about June 1963, did you start considering whether or not certain places would be used for Valery banana development and certain other places could be closed down?

A As the experimental, and later smaller commercial quantities of Valery banana came to market, and as we continued to find that the banana sold well, that it was liked by the consumer, and that it had such a much better rate of production than our older bananas, as these things began to come into focus, obviously the next question was where would we make our principal production of these bananas.

The amount we would get, and the fact that we did not have to move out all the time because of Panama disease meant that we didn't need nearly the acreage that we had.

In fact, we probably would get by with a quarter, certainly less than half of the acreage that we then had, and the problem was to pick the best acreage to grow this because we had a very serious problem.

The advent of Ecuador had created a dramatic change in the economics of the banana business. With unlimited production out of Ecuador and with the Government behind it, we had to get our costs down so that we could produce bananas as cheaply as they could be bought in the open market in Ecuador.

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The financial condition of the United Fruit Company largely came about by failure of the earlier management to realize what Ecuador was doing to the company. They kept thinking that Ecuador would go away, but Ecuador didn't go away.

THE COURT: When did the Ecuador problem start in point of time?

THE WITNESS: In hindsight, you can see the charts that started to show it in 1950. Before then it had been spasmodic. But beginning in '50, the trend starts up and it's easy to solve other people's problems by hindsight, but there is no question as a matter of hindsight that the United Fruit management failed to realize the threat that Ecuador posed to their then growing areas, and their then program of growing the Gros Michel banana, because the company was being driven out of all its established divisions.

The expense of continual moving was a minimum of $25,000,000 a year just to keep even with Panama disease. That was the cost of going into new areas every year and it was bound to go up.

THE COURT: But have you got any figures on the production, the volume of production of Ecuador?

THE COURT: Oh, yes.

MR. KLINGSBERG: We have all of that, your Honor.

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We are going to put that in through Mr. Mason.

THE WITNESS: In round figures, Ecuador produced enough bananas to satisfy the entire North American Continent. They didn't ship all of that because there weren't enough people to buy all that, but it was there and the figures showed it.

Q Now, his Honor has used the term "Ecuador problem;" you have used the term "Ecuador threat."

Was the situation such that there was strong competition, from Ecuador?

A It was the competition from Ecuador that was putting the price of bananas down below our costs of production, and was putting the company into a loss position.

Q I would like to show you Defendant's Exhibit 341 for identification, which is a memorandum from Mr. Carpenter to Mr. Sunderland, dated August 6, 1963.

You have already identified Mr. Carpenter as the comptroller of the company, is that correct?

A Comptroller and the financial vice president.

Q You identified yesterday, Defendant's Exhibit 222 in evidence, which was a memo from Mr. Carpenter dated October 2nd, 1961 to you concerning the situation in Guatemala West or Tiquisate.

Do you recall that?

A I do.

Q And is it a fact that Mr. Carpenter reported regularly to you on the Tiquisate situation in 1961, 1962, 1963?

A He did. The Tiquisate Division had been in the red for some time, but as long as there was a positive cash flow, then it could be argued that we should keep the division going and we did.

But about this time it became clear that even the cash flow would be negative.

Q Is Exhibit 341 a document which was made by Mr. Carpenter in the regular course of United Fruit's business?

A It was.

Q And was it the regular course of business of United Fruit for Mr. Carpenter to make and send you such a document?

A Yes, indeed.

Q Was it the regular course of business of United Fruit Company to keep such documents?

A Yes.

MR. KLINGSBERG: I offer Defendant's Exhibit 341 in evidence.

MR. BENDER: Your Honor, may I have a voir dire on this?

THE COURT: Yes.

xx VOIR DIRE EXAMINATION

BY MR. BENDER:

Q It is correct, is it not, Mr. Sunderland, that Mr. Carpenter prepared this memorandum on your instructions?

A It is.

Q And those instructions were given to him after the management had decided that it was going to pull out of Tiquisate completely, isn't that correct?

A No, that characterizes a little more differently than I think was the real fact.

The management was quite aware of the fact that Tiquisate was the least likely of our divisions. We had not made a formal decision to close, but certainly the evidence was in the offering that this probably would have to happen sometime before too long.

Q Wasn't the purpose of this memorandum to present to the Board of Directors the management position to close down Tiquisate?

A Oh, yes. It was in preparation for a report to the Board as to what we should do about Tiquisate.

Q And the decision had already been made to close down Tiquisate, is that correct?

A No, no. That decision would have to be made by

the Board of Directors.

Q I am not asking about the Board of Directors, I am just talking about the management level.

Isn't it true that at the management level, which is yourself and the people around you, Mr. Miller and Mr. Carpenter, that the decision had already been made in the July meeting to close Tiquisate?

A There is no doubt that my opinion was we should close down Tiquisate at this time.

Q And Mr. Carpenter understood at that particular point in time your feelings on the matter, isn't that correct?

MR. KLINGSBERG: I object, your Honor. I think this is getting into substantive cross examination.

THE COURT: No, I think it is proper voir dire. It is the motive and the basis on which the memorandum was written and you have offered it in evidence.

I think he is entitled to that.

A Immediately prior to this memorandum of August 6, which is DX 431, we had had a management committee meeting and we had concluded that we would recommend to the Board of Directors that the division be closed as soon as the cash flow was negative, and it then looked as though we were immediately confronted--would be immediately confronted with

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UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y. 10007 TELEPHONE: WORTH 4-3580

a negative cash flow and I asked Mr. Carpenter to bring together all the facts so that we can make one last analysis and then tell the Board the story.

Q Yes.

Mr. Sunderland, it states quite clearly on DX 341 that it was your intention that the data be furnished to the directors at the September meeting when they will be asked for approval of the elimination of the division, isn't that correct?

A That's what I just testified to. I had made up my mind that this was the recommendation that I would make.

Q But it doesn't say anything in there about the division being in the red or anything else, you had made up your mind that you were going to submit to the Board of Directors the recommendation upon which they should act on which called for the elimination of the division, isn't that right?

MR. KLINGSBERG: I object. It is a mischaracterization of the document.

THE COURT: That's right. The first paragraph says what the losses were, if you look at it.

MR. BENDER: I am only asking about the covering letter, your Honor, from Mr. Carpenter to Mr. Sunderland.

THE COURT: Ask him about the memorandum. That

is really the key. The letter is just an attachment.

MR. BENDER: But, your Honor, the letter is the motivation for the preparation of the document. I would like to get the motivation and then I will go into that.

THE COURT: I understand. But it is not fair, in my judgment, to ask a man whether he has eliminated any reference to past losses when the memorandum is attached and the first paragraph refers to losses. You can't do it that way.

In other words, the covering letter doesn't say anything about reasons, so you can't ask him why he didn't on that.

MR. BENDER: May I rephrase it, then, your Honor.

Q It is fair to state that the memorandum that's attached to DX 341 was prepared based on the decision of management to recommend to the Board of Directors the elimination of the division at the September meeting, isn't that correct?

A I would phrase it a little differently. I don't want to fence with you. There is no question we were arriving at a conclusion that Tiquisate should be closed.

At the management meetings I was given orally all these facts that are now set forth in the memorandum marked DX 341.

It was our habit in executive decisions to make the decisions as a group in a group meeting where I would have the production people, the financial people and all others involved, present.

We reviewed all the facts now set forth in this memorandum and it seemed very clear to us that Tiquisate should be closed. And in my mind I was pretty sure that I must recommend this to the Board because we were suffering losses there. I asked Mr. Carpenter to put it all down in black and white so that we could all review it and make sure it did state the facts as we all knew it, and that was the purpose of this memorandum.

THE COURT: Anything further on voir dire?

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THE COURT: Anything further on voir dire?

divisions.

It was clear that the soils in some of the other divisions were better for Valery bananas than was the soil in Tiquisate.

We were continually confronted by labor problems and we had, of course, the problem of the very slow and inadequate rail service across from Tiquisate to Bananera, which did not get better, continued to get worse, and, all things considered, we made a judgment that this was not a division that held any future for the United Fruit Company, and that we would be better off to go to divisions that, relatively speaking, had more advantages.

Q In this same period of time, were you also considering possible closing of other divisions?

A Oh, yes. By this time we had already closed our division at Santa Marta, Colombia, we had already closed the division in Santo Domingo. And Nicaraqua, if it wasn't closed, at lease there was so little fruit coming out of it that it was not a major factor in our company any longer, and I believe it had been officially closed.

Those had all be closed because they all were loss divisions and they all were divisions where the cash flow had become negative and we just had to close them to stop the losses that were being occasioned there.

Q What were the divisions in which you planned to concentrate your production efforts in the future, as of this time in mid-1963?

A As of this time, there were two divisions that stood out above others as the very best places to grow Valery bananas.

One was Honduras, where the Valery banana had been growing in our research plots for at least 25-odd years, and the other was a division just south of there, Almirante.

Both these divisions had probably the best soil for growing bananas of any of our divisions. They were two of the company's original mainstays in banana production. We had been driven out by Panama disease, but we still had all the installations, the port facilities, the town sites, the internal rail lines in the divisions to collect fruit, housing. All the things that went with an established banana division were still there, so that we could go into those divisions, plant in the areas that had Panama disease and could grow very prolific crops at a very low cost base.

I had arrived increasingly at the decision that the initial commercial production of Valerys should be in those two divisions. It had to start sooner in Honduras because we had the seed there. As fast as we could get some seed into the Almirante Division, we took it down there, but

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE

it takes time to develop plantings. You can only expand a banana planting about five times a year. If you start with one acre and you wanted to take what seeds you can from that planting, you can get five acres the first year and 25 acres the second year. Your multiple of five is about what you are confronted with.

We had more to start with in Honduras so we could get going faster there, but Almirante was to be the second one.

Q What were your plans for Golfito and Armuelles in mid-1963?

A Those two divisions were newer divisions. Neither of them had had the crippling effect of Panama disease yet. We knew that it would come because there were little spots in both divisions where Panama had started, but we knew we had several years to turn around in before either of those divisions would have a serious problem from Panama disease and so we thought that those two divisions should come later on the schedule of Valery plantings. But we had them very much in mind right from the very beginning.

Q In this period of time were you considering either of those two divisions as a means of compliance with the divestiture provisions of the consent decree?

A We were.

Q How long did you have in order to comply with those divestiture provisions?

A The concent decree required us to make a report to the federal court on or before June 30, 1966.

THE COURT: I think we are plunging into this here. What part of the consent decree are you referring to? Make that clear first. There was a part dealing with the railroad divestiture. Now you are dealing with some other divestiture

MR. KLINGSBERG: Mark, please, Exhibit 498 for identification, which is a copy of the final judgment in United Fruit Company, Civil Action No. 4560, in the United States District Court in the Eastern District of Louisiana dated February 4, 1958. I will offer that in evidence.

MR. BENDER: No objection.

(Defendant's Exhibit 498 received in evidence.)

Q Mr. Sunderland, just to go back a moment, Defendant's Exhibit 334 in evidence, a copy of which I will pass up to his Honor, states:

"The following present sources of supply will either cease to exist or will no longer be required," and then it lists Guatemala, East and West, Nicaragua, Ecuador, Colombia-Santa Marta, Santo Domingo, Golfito or Armuelles consent decree.

I believe you testified just previously that some of these divisions had already been shut down.

Does this refresh your recollection as to what the situation was as of June 20, 1963?

A It looks from this memorandum as though there was some fruit coming out of Santa Marta still. It would be my recollection that the company operations other than purchasing from a few scattered independent producers was at a virtual standstill, but it would look as though maybe we had not

taken formal action to close that division as yet. It no longer was an important producing center for us.

I am a little perplexed by the reference to Nicaragua. There was no production on the east side of Nicaragua, I am confident of that. There were times when we purchased from a few independent producers on the Pacific side of Nicaragua and this is probably what this memorandum referred to. We had no company installation there that amounted to anything. In fact, I think we had no company installation, period.

Ecuador continued to be the balance wheel and if we ran short of fruit to satisfy our customers we went to Ecuador, if we had to. But about this time our supplies began to be a little better and we were obviously looking forward to the time when we would not have to go to Ecuador at all.

THE COURT: Let me ask one question.

Did you ever own a plantation of your own in Ecuador?

THE WITNESS: Yes.

THE COURT: When was that?

THE WITNESS: We owned one when I first came. It was having trouble from Panama disease.

THE COURT: What was it called, so I can follow it?

Does it have a name?

THE WITNESS: Yes, it had one but I can't come up with it.

MR. KLINGSBERG: Was it Guayaquil?

THE WITNESS: That is just the port.

THE COURT: It doesn't matter. I thought it might be a point of reference.

THE WITNESS: I won't use the name, your Honor.

THE COURT: Where is Turbo?

MR. KLINGSBERG: Turbo.

THE WITNESS: Turbo is the one I testified yesterday that is right at the border of Colombia and Panama.

Q you referred to Almirante, that is not listed here. Is that the same as Bocas?

A They are synonymous.

Q Defendant's Exhibit 498 in evidence, the consent decree, paragraph VIII, subdivision (E), provides:

"Not later than June 30, 1966, United shall submit to this court for approval a plan for compliance with the obligation imposed upon United by the provisions of paragaphs (A), (B), and (C) above."

Now, in or about June 20, 1963, what divisions were you thinking of for compliance with that provision of the consent decree?

A We were thinking about primarily Armuelles but possibly Golfito.

Q What was the basis of selecting those divisions?

A The consent decree required that it be a division that produced Gros Michel bananas, and these were the only two divisions that could produce a Gros Michel banana.

Q Was there any other reason why you were selecting one of these two divisions under the consent decree at this time?

A Since these two divisions were our best two divisions, there could be no question in the mind of the government or the court of our good faith in complying with the consent decree if we came forward with a plan that involved spinning off or selling one of our two best divisions. Both divisions were close to the Panama Canal so that they could supply either the west coast or the east coast of the United States and they were both money making divisions and again, as I said, there could be no question about our good faith in trying to comply with this decree if our plan involved one of those two.

THE COURT: Let me ask you, did you ever submit a plan?

THE WITNESS: Oh, yes.

THE COURT: What did that provide finally?

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE

It is too complicated, I guess.

THE WITNESS: I can tell you in two or three sentences. The plan eventually submitted -- there were some extensions of the time and I am not sure of the exact date it finally went into court. The plan involved the spinoff of Armoelles, our best division. The problem developed with the Government of Panama, who told the court and the Government of the United States officialy that they would not recognize the power of the federal court to order a divestiture of that division and that we could enter all the orders we wanted up here, they would not be observed in Panama.

Official statements to that effect were sent to our Secretary of State and it became very clear that there was a complete impasse.

At that point the federal court reconsidered and a new plan was submitted and eventually what happened was the Bananera Division was sold. So there was a complete change in the plans of the company in complying with the consent decree.

THE COURT: The Bananera Division was capable of producing nine million stems?

THE WITNESS: Oh, yes, but we had to convince the court that the Valery banana would be all right, because

the decree said it had to be the same kind of bananas we were producing when the decree was signed.

Q There is reference to Plans A, B and C. Would you tell his Honor briefly what the essence of each of those plans was?

A Yes, I will.

I would like to interrupt for one second, though, to answer a question his Honor asked a few moments ago.

We call your attention to VIII, paragraph E about June 30th for the date for submitting a plan.

The earlier paragraph, VII, said that not later than the same date, not later than June 30, 1966, we should divest ourselves of the capital stock of IRCA, and I believe your Honor asked what that date was and it is specifically covered in paragraph VII.

Q And that was done, however, much earlier than January 1962?

A That was done way earlier, yes.

Excuse me. Ask your question again.

Q I asked you about Plans A, B and C.

A Oh, yes.

Paragraph A of VIII of the decree -- I am now looking at the exhibit which you have handed me, 498 -- it is almost illegible from this copy. I will give it from memory, your Honor.

THE COURT: Here, I will give you mine. It is a

better one (handing).

THE WITNESS: Thank you.

A It required us to come forward on the date specified, which was June 30, 1966, with a plan which involved a spinoff. I emphasize that, your Honor.

The first and obviously the preferred solution under this decree was a spinoff to the United Fruit stockholders rather than a sale of assets to somebody else. It provided that the spinoff company, spinning off to our own United Fruit stockholders, the spinoff company would have to include appropriate liquid assets, producing banana lands, banana purchase arrangements ships, terminals and other essential assets reasonably calculated to be capable of importing to the various coasts of the United States approximately nine million stems of bananas, and this company should be staffed with managerial and other personnel in a manner reasonably calculated to enable this new company to conduct the operation of the banana business by virtue of these assets.

Q What did plans B and C provide, briefly? It is just preliminary to asking you why you selected one of the other.

THE COURT: These were alternative plans?

THE WITNESS: These were alternatives.

A B and C both involved sale of assets to others.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE, COrtlandt 7-4580

One was a partial sale with the balance being spun off and the other alternative was a complete sale.

Q C was the partial sale?

A Yes.

THE COURT: A sale to an independent investor?

THE WITNESS: Correct.

Q Was the Axmuallas plan under A, B or C?

A The Axmuallas plan was under A.

Q Why was the reason you selected plan A?

A It was very difficult to arrive at a valuation for a banana-producing property. There certainly was no active market for banana divisions and I was worried from the beginning about fair treatment to the stockholders of the United Fruit Company.

There were assets that were developed, we didn't know what the value was, and if you sold to an outsider partially or completely, were you or were you not getting the full value.

If we spun off to our own stockholders there would be no question, whatever the value was our stockholders would receive it and from the beginning I thought and I continued to believe right down through that this was the preferable alternative.

THE COURT: But ultimately would be that your

stockholders would own an entity that was in competition with themselves is because they would still own United Fruit?

THE WITNESS: That's right. No difference, however, your Honor, than the spinoff, for example, in the old Standard Oil cases were --

THE COURT: I understand it is no different.

THE COURT: For a few moments the stockholders of the original Standard Oil Company owned five or six competing companies, but in due course the stock changed hands and they became completely independent and separate from us.

Q Did you interpret the decree itself to prefer any particular of the three plans?

A Yes. As I read it, there is no question that A, the paragraph A, which is the spinoff, was the preferred solution.

THE COURT: That is the reason I asked the question, because then you have no question of relative valuation.

THE WITNESS: Exactly.

THE COURT: The stockholders would have a bundle of each.

THE WITNESS: Exactly. Exactly.

Q Can you point to the provision which led you to

conclude that the decree preferred the A plan?

MR. BENDER: Your Honor, is this really relevant in going into so much detail about which was the preferred plan?

THE COURT: Well, I think you have charged or alleged motive here in connection with Tiquisate and I suppose anything relevant on that question is relevant.

MR. BENDER: Because ultimately we know that there was no spinoff, Bananera was sold, so --

THE COURT: We know that, yes. But we also know that they had to struggle through to find out what to do.

Q Would you answer the question?

A Paragraph H, your Honor --

THE COURT: You will be heard on your side and you can cross examine, but I think it is admissible.

THE WITNESS: Your Honor, paragraph VIII, VIII, of the consent decree starts out, "United shall distribute to the shareholders of United the capital stock of this new company, " and so forth.

Then at the end of that paragraph A it says, "If this is not done, then B and C come into play."

THE COURT: I understand. It is an alternative, yes.

THE WITNESS: C, for example, says -- puts it May. It seemed to me in reading this decree from the beginning that the emphasis was on A and that B and C were there as a protection to the company if we couldn't comply with A, but the emphasis was on A.

Q Did the selection of Armuelles --

THE COURT: Excuse me just a minute. This may not not be too relevant, but just for my own information, how was the nine million stems arrived at? What was that roughly in relation to the whole volume of the company at the time of the decree, would you know?

THE WITNESS: I would estimate a third of the company.

THE COURT: All right. I don't want to get into detail, I just want to get the background.

Q If you are proceeding under plan A, why would you select, say, Armuelles as compared to Tiquisate?

MR. BENDER: At what time?

Q In your thinking now in 1963 when you were deciding to close Tiquisate and you are deciding according to what you just testified that Armuelles is your best bet under the consent decree.

A Well, to start with, Tiquisate could not produce Gros Michel bananas in any substantial amount and they could

SOUTHERN DISTRICT COURT REPORTERS
FOLEY SQUARE U.S. COURT HOUSE

get nowhere near nine million stems as required.

With the emphasis on the Gros Michel banana, there was no alternative but to start with either Armeulles or Golfit

Q Was there any reason why you would pick your best division as compared with some other division under plan A?

A Well, there were a lot of raised eyebrows that I first suggested that Armuelles be the division because it was the mainstay of the company. However --

THE COURT: Where does it say in the decree there has to be that type of banana? Will you find that for me?

THE WITNESS: Yes, I think I can.

Yes. At the top of -- these pages are not numbered.

As you turn over on paragraph VIII, VIII, to the top of the next page, the second line, your Honor, says, "It sayd nine million stems of banana shall on the average be equivalent in size in botanical variety freedom from disease and so forth."

Botanical variety meant Gros Michel.

THE COURT: Thank you.

Q If you are spinning off to your own stockholders under plan A, would that influence your thinking in selecting your best division as compared with one of the other divisions? You were in the middle of answering that.

A The other division could not produce nine million

stems of Gros Michel bananas. Panama disease had decimated those divisions so far as the Gros Michel was concerned.

Q Who were your attorneys in this period of time consulting with you on the consent decree?

MR. BENDER: Which period of time?

MR. KLINGSBERG: 1963.

A The firm of Covington & Burling in Washington, particularly Hugh Cox of that office, with our principal advisors.

Q Did Mr. Cox give you any advice based as to whether or not the Department of Justice would accept Tiquisate as a basis for compliance?

MR. BENDER: I object, your Honor, unless we -- if he is going to get the advice of counsel in this particular situation, I think that would open up all the advice that counsel gave.

THE COURT: I would think so.

Do you expect to call Mr. Cox?

THE WITNESS: He is not living.

MR. KLINGSBERG: I think he is deceased.

THE WITNESS: He died just a few months ago.

A few weeks ago, as a matter of fact. It was very recent.

THE COURT: All right. Can you approach it some

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE

other way besides asking for a direct conversation with Mr. Cox?

Q Did you consider in your own mind based on all the factors before you whether or not the Department of Justice would accept Tiquisate as the basis for compliance?

MR. BENDER: I object, your Honor, as to what he considered in his own mind.

THE COURT: No. He is not only an executive, but he is also a lawyer and an anti-trust lawyer. I will allow his opinion.

A I did consider it.

Q And what conclusion did you reach?

A I concluded that Tiquisate being one of our worst divisions would be under a cloud right to start with, that the Department would be very suspicious that we were not creating a viable, competing company. I was well aware of the fact that the decree required that the area sold or spun off be capable of producing the Gros Michel banana and under no stretch of the imagination could Tiquisate do that.

Q Did you receive directly or indirectly any advice as to what the Department of Justice's thinking was on this subject?

MR. BENDER: I object, your Honor.

THE COURT: I will allow it.

A I did. Mr. Cox told me that he had had informal discussions with the Department of Justice and they had indicated they would not be satisfied with Tiquisate.

THE COURT: Let me ask you this:

You had to interpret the liquid assets provision on the spinoff, did you not?

THE WITNESS: Yes.

THE COURT: And did you consider the cash flow of the assets, the lands to be spun off in relation to how much of liquid assets would be required to make it viable?

THE WITNESS: Oh, yes. The plan had to prove that this company would be viable and Tiquisate just wouldn't be viable.

THE COURT: Why would it not be viable? That's what I am asking now.

THE WITNESS: Well, it was a lost division. It had the poorest record of any of our divisions.

I think you have to apply a common sense judgment to these things and it just seemed to me as a matter of common sense we would be spinning our wheels to suggest to the Department that our worst division was an adequate spinoff to comply with this decree, particularly when it didn't produce the Gros Michel banana and couldn't.

Q Which did you think would be more fair to your

shareholders, spinning off Tiquisate or Armuelles?

A Well, the stockholders would get the value of the assets, whatever they were, either way.

A company based on the Tiquisate Division would not be a very competitive company. I didn't see how it could be a money-making company at all and it seemed to me we would not be doing the United Fruit stockholders any favor, in fact, I think it would be worse than that, and I just dismissed as impractical the possibility of using Tiquisate as the spinoff or sale division to comply with the decree, and I was confirmed in that conclusion by what Hugh Cox told me about the attitude of the Department.

Q Now, did the Department of Justice accept the Armuelles Plan?

A Yes, they did.

Q And did the Court accept the Armuelles Plan?

A It did.

Q Now, sir, coming back to this period in mid-1963, I show you Defendant's Exhibit 346 in evidence, and ask you if you can tell us what that is?

A The subsidiary company owning the Tiquisate Division was a subsidiary of the United Fruit Company, and we owned all of its stock.

The United Fruit Company, pursuant to this memorandum that you have handed me, DX 346, was giving its consent pursuant to the laws of Delaware, where the Agricola Company was organized, to sell and exchange and transfer all of its assets.

This was the necessary corporate step in the closing of that division.

Q Does the date of that document, September 23, represent the official date of the authorization--

THE COURT: Always give a year when you ask a question for the record. You said September 23.

MR. KLINGSBERG: Pardon me, your Honor.

Q Does the date of Defendant's Exhibit 346, September

SOUTHERN DISTRICT COURT REPORTERS
FOLEY SQUARE COURTHOUSE

23, 1963, represent the official date of the closing of Tiquisate?

THE COURT: I don't understand that question as a lawyer. What does that mean, official closing date?

Q Does that represent the date when Compania Agricola of Guatemala authorized the closing of Tiquisate?

A The official action by the subsidiary company took place immediately after acceptance of this authorization. It would be either that day or a day later. It was right at this time.

THE COURT: But I don't understand what you mean by closing. I just want get a little more on that so I can understand it.

THE WITNESS: Perhaps I ca. help, your Honor.

THE COURT: Yes, I wish you would.

THE WITNESS: This authorized the company to sell and dispose of all of its assets and without this authorization we would not have been acting pursuant to the Delaware Statutes.

THE COURT: I understand that. But what did you do? This was merely an authorization, it is not an accomplished fact.

THE WITNESS: That's right. That's right.

THE COURT: What is the accomplished fact? That

is what I am trying to find out.

THE WITNESS: That's why my answer just now was within a day or two after this authorization, the subsidiary company took the necessary step.

THE COURT: Which is what?

THE WITNESS: Which was authorize its manager to sell its properties.

THE COURT: Just authorized to sell the properties? That is what I am trying to get at.

THE WITNESS: Yes.

THE COURT: It wasn't a sale of its property?

THE WITNESS: No, no, no.

THE COURT: MR. Klingsberg's question seemed to imply that there was a closing, a sale or something. I couldn't understand it.

THE WITNESS: There was no sale at the courthouse step in one transation.

THE COURT: That's what I mean.

THE WITNESS: The procedures, as I recall them, were we analyzed the various types of real property we had and put upset prices on various types, the pasture land would have one upset price, the woodlands a different one, agricultural properties still a third, and the subsidiary company authorized the employment of an agent in Guatemala

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y. 10007 TELEPHONE: CORTLAND 7-4580

to help in the sale of these properties and the manager was told to expedite the thing.

Those were the physical actions taken by the subsidiary.

Q You didn't stop producing and selling bananas at this point immediately, did you?

A Oh, no.

Q Now, prior to September 1963, am I correct that there is no plan or program to sell off all the assets and dispose of all the assets and close Tiquisate?

MR. BENDER: I object, your Honor.

THE COURT: Yes, I will exclude that.

You got to do it step by step and let me understand the legal significance of each step.

Q After the various corporate actions which you have described, tell the Court, step by step, what was done pursuant to those corporate authorizations?

A The first step was to get out agricultural organization to analyze the real property that would be for sale and it was classified into various categories and I think I made reference to them a minute ago.

Pasture lands would be one, woodlands another, developed areas for growing of crops would be a third. And upset prices were put on these various category of property

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE

and then our manager in Tiquisate was authorized to proceed with those sales to get the best price he could, but no less than the upset price that had been put on the property, and he was authorized to hire an agent to publicize and expedite the sale and make it known generally that these lands were available for sale, and that is what was done.

THE COURT: That may not be the whole story.

What I am interested in is this:

You can certainly start liquidating a company without the approval of the stockholders, but when you reach the point under Delaware law, as I recall it, where you want to sell substantially all the assets, then you need this kind of resolution which is dated September 23, 1963.

My question is, did you start selling before September 23, 1963 any portion of Tiquisate?

THE WITNESS: There had been properties earlier that we considered excess and not needed in the foreseeable future, and there had been sales of those and I believe I testified to that yesterday.

THE COURT: Did you have a formal plan of liquidation for the Compania Agricola?

THE WITNESS: After this authorization, yes.

You say formal plan. It was along the lines I just described of an inventory of our assets and a proposed

way of handling each item of inventory.

THE COURT: I mean, it wasn't the kind of formal plan of liquidation which you have under American Tax Law?

THE WITNESS: No, no, no. As a matter of fact, I think this company did not become--was not liquidated corporate wise, I think it exists as a shell company.

THE COURT: Yes. It is a liquidation of assets.

THE WITNESS: We sold all its assets, but we did not go through a statutory dissolution.

Q You testified yesterday, did you not, that after your trip in January 1960, there was an inventory of excess land made for all of the plantations.

Do you recall that?

A Yes, I remember that.

Q And some of that pursuant to the plan which you had at that time, there was some excess land sold in the Tiquisate area prior to September 1963?

A That's just what I've testified to, yes.

Q And was any of that land Panama diseased land?

A It was land we considered as surplus and for which we had no foreseeable need. Mostly it was outlying land where we had trouble with squatters and if we didn't sell we would lose it anyway.

I doubt if very much of it was centrally located

banana producing land with or without Panama disease. Those centrally located areas I'm sure were still assets of the company. It was outlying things, areas in which we perhaps had hoped to expand one time, areas in which we had raised cattle and maybe no longer needed the area. Surplus in that sense of the word.

Q Now, was your purpose beginning a land sale program after September 1963, different from your purpose prior to that time?

A Oh, yes. Oh, yes.

This was a going out of business type of sale, the other was a sale to trim off unnecessary edges to comply with the desires of the Guatemalan Government that we make available lands which we did not need.

The motivation was quite different.

Q What sort of instructions, if any, did you give on to whom the land was to be sold after September 1963?

MR. BENDER: I object, your Honor, unless there is some written instructions.

THE COURT: I will allow it.

MR. BENDER: That is the best evidence.

A The whole thrust was to realize the most we could from our assets and those were the instructions.

THE COURT: Did you put any restrictions on the

land use in any of the categories you mentioned?

THE WITNESS: We did not.

Q Did you tell the people who were selling the land not to sell to banana growers?

A We did not.

Q Did you become aware of the fact that much of this land was sold to farmers who used it for cotton growing?

A Yes, we were aware of the fact that there was a cotton boom going on in Guatemala at the time and that good land, like the land we were selling, was in demand and that those who could afford to pay for land were very likely those who were involved or wanted to become involved in the cotton business, cotton growing business.

Q Did you take any action to prevent these farmers from growing bananas as compared with cotton?

A No.

Q Was the land suitable for cotton growing?

A Yes, it was excellent. It was in great demand for cotton growing.

Q There was various equipment and tools and things of that sort which the company also had in addition to land.

What were your instructions in regard to the disposition of that?

A We tried to salvage and get as much value from

them as we could.

Much of the equipment was needed in Guatemala and to the extent that we needed it and use for it in Guatemala, we used the equipment for those purposes. To the extent that we didn't, we sold, and some of those who wanted to plant cotton wanted some of our agricultural equipment. I couldn't tell you, without going back into the records, what the allocation was, but we did it both ways.

Q Was this valuable equipment?

A Oh, yes.

Q Was it sometimes more or less valuable than what you were selling the land for itself?

A Many times it was more valuable than the real estate itself.

THE COURT: What did you do about the cars which were owned and leased to IRCA and locomotives?

THE WITNESS: I can only guess.

THE COURT: Don't guess if you don't know.

THE COURT: I don't remember.

Q Did there come a time when you expanded the Bananera Plantation on the East Coast?

A Yes. I would have difficulty putting a date on it without looking at some of the documents, but there is no question we expanded it and it eventually became a large

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

division, which was sold to comply with the consent decree.

THE COURT: Excuse me. When you say expanded, you mean you bought more land or used more land?

THE WITNESS: No, no. We went back into Panama diseased land that we had and planted the Valery banana and increased the production of the division.

The division's production was down at a rather low ebb at about this time.

MR. BENDER: Could I have that answer read, please? I am sorry, I missed it.

(Record read.)

Q Mr. Sunderland, did you recommend to the Board of Directors that the CAG plantations be liquidated for the purpose of laying IRCA low?

MR. BENDER: I object to that, your Honor. That calls for a conclusion.

THE COURT: I will allow it.

A I did not make any such recommendation for any such purpose.

Q Did you make a recommendation that the CAG plantations be liquidated in order to get revenge against IRCA because of the Ripley decision?

MR. BENDER: Same objection, your Honor.

THE COURT: Same ruling.

A I certainly did not.

THE COURT: I haven't heard in your testimony any mention of the Ripley decision in relation to your business judgments that you were entertaining.

Was there such a discussion?

THE WITNESS: After the Court of Appeals affirmed the Ripley decision, that became a fact of life. I didn't see that it affected my decisions very much one way or the other, except I wanted to be sure we had no man on the IRCA Board and no interconnections of any kind that would perpetuate the problem that had been adjudicated in the Ripley case. But the railroad was there and as long as we were in Tiquisate we would use it and--

THE COURT: Did you feel that you were powerless to renegotiate the $130 a car rate set by Justice Hammer?

THE WITNESS: We made some inquiries to see if they wouldn't renegotiate. We were universally rebuffed in our inquiries and I gave up on the idea.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y. TELEPHONE: (CORTLAND 7-4580)

Q Mr. Carpenter had reported to you in the exhibits you reviewed this morning that CAG was losing money at Tiquisate.

Was the freight rate one factor which contributed to that?

MR. BENDER: I object to that, your Honor, as leading.

THE COURT: Well, it's a preliminary question.

Was the freight rate a factor in contributing to the net loss?

MR. BENDER: I withdraw the objection.

A The freight rate was definitely a factor. The rate went up, as I recall, from about sixty odd dollars a car to around $130 a car.

Q How would you evaluate relatively, in terms of all the factors you considered, the freight rate which came out of the Ripley decision and all of the other agronomic and other factors which pertained specifically to development of the Valery banana which you testified about yesterday?

A The new freight rate couldn't be ignored. It was a figure that showed up, of course, when we analyzed our costs. But the overwhelming decision, or the overwhelming facts causing a decision with respect to Tiquisate were rare on the other side of the ledger. There were planta-

tions, particularly Honduras and Almirante, where the Valery banana, which was our only hope for future profitability in this company, those two divisions, Honduras and Panama, were so much better than Tiquisate that it wasn't even close.

And with the advent of the Valery we did not need all the divisions we had. Some divisions had to be closed. We would have surplus production that we couldn't handle.

The decision solved which divisions were the least likely to be profitable for the company, and Tiquisate led the list as the one that was least likely to be a good producing division.

Q Now, sir, beginning with the time that you first came with the company in about January, 1960, and going forward through 1961, 1962, 1963, what was your attitude in regard to persons, if any, who made inquiry concerning the possibility of buying one of your divisions under the consent decree provision which we have reviewed?

MR. BENDER: I object, your Honor, about attitude.

THE COURT: Read the question back. It's a little complicated to me.

(Question read.)

THE COURT: I will allow it.

A I was very well aware of the fact that when the time came to report to the federal court on our plan for

compliance, we would need to have a record of what we had done in preparing for such compliance, and while I thought and told all prospective purchasers that a spin-off under paragraph (A) was very much in our mind, I instructed all the people in the company that under no circumstances should we discourage, in fact we should actually encourage, any inquiry about the purchase, in part or in whole, of any division and that if the proposed purchase seemed viable, we would certainly give careful thought to going to the Department of Justice and trying to get approval for it.

Q Did there come a time--

A Let me expand on that answer one little bit.

Subject, of course, to the problem which was always present in our mind that we had to be fair to the United Fruit Company stockholders.

I could not waste company assets by bargain sales. It had to be a real valuation, and I was constantly troubled, and I made no secret of this to those who inquired, I was troubled about the problem of valuation. I told people that the only way I could see to really and completely cure the valuation problem was to spin off to our own stockholders.

Q Did there come a time in or about November 1961, when you had some negotiations with Mr. Philip Davis and the Delisser family and Blue Goose Growers?

A Yes, there was such a time--

THE COURT: I will warn you if you go into this field it may open up an awful lot of evidence. I don't know how important it is. It is going to take a lot of time.

Mr. Sunderland has answered the basic question as to policy. Why are the details important? I don't know.

Q Let me ask this:

Did you have discussions with persons who were interested in going into the banana business concerning the sale of any division between 1960 and 1963?

A Yes, we had a number of discussions with a number of people.

Q And in those discussions, did you exclude the possibility of selling them Tiquisate if they wanted it?

A No, indeed. It was always mentioned. In talking to somebody, we always catalogued all of our divisions, gave them as good a thumbnail sketch of the division as we could, encouraged them to go look for themselves and make up their mind and come back and tell us what they would like to do.

Q Did you have any discussions with anyone who was already in the banana business in this period of time?

A Yes. We suggested to a number of people--we were prohibited by the decree from talking to Standard Fruit,

which was the biggest single competitor, but we talked to all the others we could, trying to interest them in being the person that would help us comply with this decree.

Q Did any of the banana company representatives you spoke to express any interest or disinterest in buying Tiquisate?

A Yes, we had at least two who told us they didn't want Tiquisate as a gift, let alone pay us for it.

Q Can you identify those two?

A I can. One was a man named Staff, who was the head of the next largest company behind Standard Fruit Company. His company was called the Ecuadorian Fruit Company.

There was no question. He said flatly he wouldn't have Tiquisate as a gift because he didn't think bananas could be grown profitably there to be sold competitively in the United States market.

Another man with whom I dealt in a very preliminary way. was a man named Consolo.

He too, had no interest whatever in Tiquisate.

Those are the only two that come to my mind, but the Tiquisate Division was not highly regarded in the banana business and those who knew the banana world at all.

Q I show you Defendant's Exhibit 488, which is a letter from DeLawder to Haase, dated October 12, 1962, which

refers to a letter from Haase that was sent to you; Defendant's Exhibit 489, which is a letter from Mr. Haase to Mr. DeLawder, dated October 22, 1962; Defendant's Exhibit 490, which is a letter from you to Mr. Haase, and I will ask you if in this period of time, towards the end of 1962, the United Fruit Company was involved in any dispute with the IRCA concerning the termination date of the contract regarding the shipment of bananas over the IRCA?

THE COURT: That's a long question.

Would you mind reading it back to me, please.

(Question read.)

A My recollection is that the IRCA continued to maintain that our contract to ship over their lines expired in 1968 rather than January 1, 1963. And about this time I received an official letter from Mr. Haase, as president of IRCA, saying that they intended to sue us, if necessary, to establish that that was the termination--that '68 was the termination date rather than '63.

My lawyers had advised me that January 1, 1963, was the termination date, and my recollection is that in the Ripley decision that had been held to be the effective termination date.

THE COURT: Termination of what?

THE WITNESS: Of the requirement to ship over the

IRCA line from Tiquisate.

Q In connection with this, had you advised the IRCA that after the contract expired in your view, you planned to try some trucking experiments?

MR. BENDER: I object, your Honor. Leading the witness.

THE COURT: No. I will allow it.

A We tried a number, or thought of a number of ways to try to keep the Tiquisate Division in operation. One of our serious problems, as I have testified before, is that there was a long haul across the mountains to the East Coast for shipment.

It was a three hundred-odd mile journey that took more than two days. We had had suggested to us by some truckers that they could take the bananas out of the Tiquisate Division, truck them directly North into Mexico and on to the United States and that they could provide us with better and cheaper transportation. And we told IRCA we were going to make one experimental shipment and see whether these men knew what they were talking about.

It turned out they did not know what they were talking about. It was a wasted experiment.

We also gave a good deal of thought to the building of a port on the West side, and it was my understanding that

once we passed the January 1, 1963, deadline, which was the end of our commitment to ship any bananas we produced over IRCA, that this might be a viable alternative.

Costs had developed to a point where this did not prove to be very viable, and after some preliminary studies, we rather gave up on that, although theoretically it seemed good but we could not find a practical way to make it pay.

Q In or about this period of time, while this contract dispute was going on, did you hear from Mr. Chalk?

A Yes. We sold our stock in IRCA, as I recall, in early '62 to a conglomerate called BSF. Some time in the summer or fall of '62 we heard that BSF had sold its stock to Mr. Chalk. We had had no preliminary--

THE COURT: You don't mean BSF sold its stock, you mean the owners of BSF had sold the stock.

THE WITNESS: BSF had sold the IRCA stock it owned to Mr. Chalk.

THE COURT: That is what I thought.

A My recollection is we had no contact with Mr. Chalk until the end of December of that year, plus or minus a week or so. It might have gone over the first of January. We were rather curious about it because we had assumed that anybody buying that stock would at least be interested in our operations in Western Guatemala but he had not made any

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

Q What did Mr. Fox report to you concerning the early communications and meetings with Mr. Chalk?

You can be brief because Mr. Fox will be here and this is just preliminary.

A Mr. Fox met with Mr. Chalk early in January of 1963. It was a very friendly meeting. Mr. Chalk asked him to outline the problems we had with IRCA, to tell him what he could about our future plans for Tiquisate. And Mr. Fox outlined them in some detail, emphasizing the fact this was a money-losing division and emphasizing the fact that we were getting what we condisered very inadequate service in the two days plus it took us to get our fruit from Tiquisate over to Bananera for shipment.

And he reported that Mr. Chalk said he understood the problems, that he thought it was up to IRCA to come forward with a plan which would show better service, he thought some bigger and heavier diesel engines might help, some new railroad equipment in the form of cars might help, and he said he understood perfectly that any businessman would have to close a division after it ceased to be profitable, particularly after it ceased to have a positive cash flow.

He understood that completely and he thought they should come forward with something that would reduce our costs

and allow us to stay in business longer and help us to stay in business continually.

That was in essence the conversation. It took several hours.

Q Were there subsequent communications between Chalk and Fox in 1963?

A Yes.

Q Were you advised either by Mr. Fox or otherwise as to whether Mr. Chalk had come up with any suggestions to help the situation?

A I was advised continually about the status of his negotiations with Mr. Chalk, and my recollection is that we did not receive any proposals from IRCA as to how they could improve their service or how they could give it to us at a lower cost.

Q Did there come a time later on in 1963 when Mr. Chalk expressed some interest in Tiquisate in regard to the consent decree?

A Yes. Some eight or ten months after our initial contact with Mr. Chalk, he asked what our plans were about compliance with the consent decree, and from that inquiry arose a discussion as to whether he might acquire banana-producing lands in the Tiquisate area. Our response was fine, but we would have to clear this with the Department of

Justice because there was no use talking about a sale if we should only later find out it would not qualify.

Q Can you identify for us George Blow?

THE COURT: Who?

MR. KLINGSBERG: George Blow, B-l-o-w.

A George Blow was a young lawyer in the Covington & Burling law firm in Washington working under the direction of Hugh Cox, and he had been involved in I think the original negotiation of the consent decree.

In any event, he had helped Hugh Cox in the developments after the consent decree in helping the company arrive at a plan for compliance. He had about this time left Covington & Burling to go into practice for himself, but because of his background we continued to use him, with the knowledge and consent of Covington & Burling, as a young man who could be helpful to us in some of the details.

Q Did he participate in these discussions with Chalk and Fox?

A At least once and maybe twice at meetings in Washington he went as an observer. I recall particularly his going to the Department of Justice as an observer, and he was the only representative, if you can call him that, of our company at that meeting in the Department of Justice.

Q I show you Defendant's Exhibit 496 for

identification, which is a letter from Mr. Blow to Mr. Fox, attached to a document dated October 4, 1963, entitled "Memorandum Of Conference At The Offices Of O. Roy Chalk in the Seagram Building, 375 Park Avenue, New York City on Monday, September 30, 1963," with the initials GB.

Was this document given to you as part of the reports you received concerning the Chalk negotiations?

A It was.

MR. KLINGSBERG: If your Honor please, I offer this document in evidence at this time for the limited purpose of connecting Mr. Sunderland's testimony and exploring what was in Mr. Sunderland's mind and what his motivation was in these negotiations.

Mr. Fox will be a witness and Mr. Fox will testify that this memorandum represents accurately what occurred at the conference.

THE COURT: Any objection?

MR. BENDER: Yes, your Honor.

I object. I think the witness can use the memorandum to refresh his recollection without it being in evidence. Apparently that is the purpose of it.

THE COURT: But it was made in the regular course of business. It purports to reflect an event or an occurrence that was asked for and done as part of a negotiation that is

relevant.

MR. BENDER: What is the date of this?

MR. KLINGSBERG: This is October 7, 1963.

THE COURT: And it is with the president of the plaintiff, the then president of the plaintiff. For all these reasons, I think it is admissible. I will allow it.

(Defendant's Exhibit 496 received in evidence.)

THE WITNESS: This memorandum, your Honor, refreshes my recollection in one respect. One of these meetings at least took place in New York City rather than Washington. I think I thought I recalled they all took place in Washington, but New York was one of them.

Q Did you receive a report on what Mr. Chalk was asking for in these negotiations?

A Yes.

Q What specifications or conditions, if any, were you advised Mr. Chalk desired in connection with this?

MR. BENDER: I object, your Honor. The document is in evidence and the witness has been refreshing his recollection from documents in the past. He hasn't been testifying from independent knowledge.

THE COURT: I wouldn't hcaracterize it quite that way.

What is the point now? What is the question?

(The question was read.)

THE COURT: Is there any written document that reflects it?

MR. KLINGSBERG: Yes.

THE COURT: That would be the best evidence.

MR. KLINGSBERG: It is reflected in 496.

THE COURT: Then you don't have to ask the witness. What page of 496?

MR. KLINGSBERG: For example, at page 3 it says his interest was in buying cheap. At page 4 it says he wanted part of the fleet. At page 5, he wanted United Fruit's top men, including Mr. Fox. At page 8 he says he can't finance it so United Fruit has to give him a loan.

THE COURT: What can Mr. Sunderland add?

MR. KLINGSBERG: I am building up to the point where Mr. Sunderland gets personally involved.

THE COURT: Let him get personally involved. Don't ask him what Mr. Chalk had in mind.

Q Now, what instructions, if any, did you give Mr. Fox when you heard that Mr. Chalk might be interested in buying Tiquisate?

A To give it every serious consideration he could.

Q Did you tell him to try to sell or not to try to sell?

A Oh, definitely, try to sell.

Q Why did you tell him that?

A Well, hopefully through this we could create a compliance with paragraph (C) of the consent decree which provided for compliance by arrangements wherein we would sell part and spin off part As I think I testified earlier, I was anxious that we exhaust every possibility so that when we went to the court with our plan we could show that we had not been derelict in trying to promote and find a way to comply with the decree to the satisfaction of the court.

Q And I take it you were advised, as it states in PX 496, that he -- "He" meaning Chalk -- said at paragraph (B) that this paragraph necessarily called for "A real money negotiation" and that his interest was in buying "cheap"?

A That is correct.

Q What was your reaction, if any, when you were advised that Mr. Cahlk wanted the best ships in United's fleet? How much were those ships worth?

A My recollection was he was talking about five or six of our new ships, each of them worth at least five million dollars, so that right there was an asset worth 25 or 30 million dollars.

Q What was your reaction, if any, when you were told

that Mr. Chalk could not find another lender and that he wanted notes from United Fruit?

MR. BENDER: I object, your Honor. That is leading the witness. Could we have the conversation?

THE COURT: All right, give him the conversation.

Q Were you advised by Mr. Fox that Mr. Chalk wanted notes from United Fruit because he couldn't get another lender?

MR. BENDER: I object. Same objection.

THE COURT: Just ask him what was said on the subject of whether the purchase was to be cash or was paper.

Q What, if anything, was said which was reported to you by Mr. Fox concerning Mr. Chalk's proposed means of financing the transaction?

A I was told that Mr. Chalk thought he could raise the million dollars which was a written requirement of paragraph (C) of the consent decree but that over and above the million dollars he would want to have the United Fruit Company finance the matter, preferably by notes.

Q What was your reaction to that?

A My reaction to that was I was very sure that the Department of Justice and the court would not approve a plan where we remained -- "we" being the United Fruit Company -- remained the principal financial interest behind

the new competing company. I was sure this would not be a plan that would be approved.

Q Under the plan that you were talking to Chalk about, plan (C), would the United Fruit shareholders have had a portion of Mr. Chalk's corporation?

A Yes. He said he wanted 51 per cent and he wanted to pay down a million dollars and for that million dollars plus the notes he wanted, as I say, 25 or 30 million dollars worth of ships, principal executives, a whole lot of sales and transportation facilities, and I was at once concerned about corporate mismanagement in selling for what I considered a ridiculous amount some very valuable assets of the company.

This again brought me back to the belief that the only safe way to handle this decree was to spin off to our own stockholders so we didn't run into this valuation problem which was a very difficult problem, one that I didn't know how to solve.

Q Would you identify for us, please, Defendant's Exhibit 417 for identification?

A 417 consists of a covering letter and a memorandum attached to it. The covering letter is from George Blow to Victor Folsom, our general counsel at the United Fruit Company. The covering letter is dated March 16th and

attached is a memorandum of the same date, March 16, 1963 -- oops -- '65. I'm sorry. Wait a minute.

Q This is apparently an error, is it not?

MR. BENDER: What is apparently an error?

THE WITNESS: The copy is so indistinct I can't tell whether it is 1963 and '65. I guess maybe -- I'm sorry. I think I misread that. It was '65. Both documents have the same date.

Q Right.

Okay. What is the title of the first page of the memorandum?

MR. BENDER: I object to reading titles into the record. until the document is marked into evidence.

THE COURT: Sustained.

Q Can you tell us what does the memorandum consist of that is attached to the letter?

A It is a memorandum outlining a conference in the board room of the United Fruit Company on Thursday, January 9, 1964.

Q Were you present at that meeting?

A I believe I was.

Q Have you reviewed this memorandum to determine whether it accords with your recollection of what occurred at that meeting?

A I have, and it does.

MR. KLINGSBERG: I offer Defendant's Exhibit 417 in evidence.

(Defendant's Exhibit 417 was received in evidence.)

BY MR. KLINGSBERG:

Q Mr. Sunderland, shortly before this meeting of January 9, 1964, had you had a personal telephone conversation with Mr. Chalk?

A I did.

Q And what did you say and what did Mr. Chalk say in that conversation?

MR. BENDER: I object, your Honor. There is a very long transcription of the telephone conversation that is contained in a document and rather than this witness characterizing what was said, I think that document should be submitted into evidence.

THE COURT: You can offer it. You can cross examine on it. It is available to you. But here is a man on the stand who was part of the conversation, it is conversations with the president of the plaintiff. I will allow it.

A The conversation, as the question indicated, was a telephone conversation. Both Mr. Fox and I were on the phone at the Boston end.

The conversation dealt largely with this situation.

Somewhat earlier, when Mr. Chalk had evidenced some interest in buying some of the properties at Tiquisate, we had talked to our agricultural people in Boston and were under the impression that we had some 20 or 30,000 acres of good banana land that had not yet been sold, and he, Mr. Chalk, evidenced interest in knowing about that, in being given a price. We undertook to find out about it.

We communicated with Guatemala and found that we

were behind in our records in Boston, that a good share of that had already been sold or committed to people in the area who wanted to buy it, and we had so advised Mr. Chalk and he was very upset by it, and this was a rather complaining type of phone call in which he complained about the fact that there was no longer this amount of land left, and a lot of the discussion involved whether or not the land could be reacquired.

It was the opinion of our people if somebody wanted to pay those purchasers a premium, small premium, for the land that a lot of it could be reacquired and if a banana division was contemplated over there that these people were all good candidates for independent producers to sell bananas -- grow and sell bananas to whoever wanted to have a banana operation.

Of course, this independent producer type of operation was the kind that Standard Fruit had had very near to Tiquisate in Guatemala during the time that they were there and we suggested all these alternatives to Mr. Chalk, none of which seemed to satisfy him.

Q On January 9, 1964, did you call a meeting of your staff to consider how to handle the situation as regards Mr. Chalk and the consent decree?

A Yes, I did.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

Q And up to that time, as I understand it, these discussions with Mr. Chalk had been going on on and off for about a year, is that correct?

A That is correct.

Q During that entire period of time, had anyone gotten any approval from the Department of Justice as to any plan that Mr. Chalk had proposed?

A Because of our insistence that the Department of Justice be apprised of these negotiations and apprised of the fact that we might be coming to them with the request that this be considered as a partial compliance or hopefully even a complete compliance with the consent decree and because Mr. Chalk said he would be very happy to go and explain his plans and hopes to the Department, for those reasons a meeting was arranged with Mr. Chalk making all the arrangements and we had only an observer there in the form of this young lawyer, Mr. George Blow.

Q Was there any approval forthcoming from the Department of Justice of any plan that Mr. Chalk had suggested?

A There was not.

Q Had Mr. Chalk come up with any kind of a concrete offer to buy a particular amount of properties for a particular price?

A No. This was a very annoying part of these

discussions with Mr. Chalk. He at no time made an offer. He kept asking us to give him options that would hold the property for him while he considered a lot of alternatives, he made it clear that he didn't want to pay very much money and, as I testified a moment ago, at one time he wanted the United Fruit Company to carry the financial end of it by taking notes in payment of whatever it was he eventually decided to offer to acquire, and at no time did we have a concrete offer of any kind from him, except just a general statement of interest which he seemed to repeat from time to time.

Q Did there come a time on or about October 9, 1963 when you wrote a letter to the government of Guatemala advising them of the plans to liquidate the CAG plantations in Tiquisate?

A I did write such a letter and it was in October, and this exhibit you show me refreshes my recollection that it was October 9th of 1963.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

Q Do you know whether Mr. Fox advised Mr. Chalk of that fact?

MR. BENDER: When?

A Mr. Fox advised Chalk immediately about the dispatch of that letter.

Q Did Mr. Chalk ever indicate directly or indirectly according to your information, whether he was interested in going out in the open market and buying any of these lands that were available for sale?

A We made the suggestion to him a number of times, but so far as I know he didn't know anything about it.

Q What decision was reached at this meeting on January 9 concerning the Chalk situation and the consent decree situation, if any?

THE COURT: What date was that?

MR. KLINGSBERG: January 9, 1964. I am sorry, your Honor.

A We reviewed all the developments to date between the United Fruit Company and Mr. Chalk. We concluded that we didn't have a firm offer of any kind and that negotiations gave no indication of any very sincere effort to want to buy or acquire property in the Tiquisate area, and we were at this time confronted with a very practical problem.

If you are going to close a division, you have to

proceed rather promptly with it, it can't be a long, lingering thing, because that would encourage strikes by our employees, it would encourage Government action of various kinds.

Once the decision is made, history had shown us the only wise thing to do was to proceed very promptly with it, and having advised the Government that we were closing, we had instructed our people to be as expeditious as they could, consistent with getting values that would be good value in selling our assets, and that is how they were proceeding.

This seemed to be a diversion with no real possibility of anything worthwhile coming from it for the United Fruit Company, and that was--

THE COURT: What date did you notify the Government that you were going to close?

THE WITNESS: The 1st of October of 1963.

MR. KLINGSBERG: October 9, 1963.

Q Was there any consideration at this meeting in connection with the Chalk matter of alternative methods of compliance with the decree?

A The various alternatives were always before us and usually discussed at most of our meetings. I would have to go back through this memorandum to refresh my recollec-

tion as to the precise discussion at this precise meeting, but it was always in front of us.

No solution to the decree existed in a vacuum, it was always relative to other possibilities and always discussed that way.

Q Take your time and look at the memorandum and see if it refreshes your recollection of any consideration of these matters, the consent decree matters, in connection with the Chalk matter.

(Pause.)

A I have run through this hurriedly. Would you repeat your question, please?

Q Yes.

I would like to know whether in connection with a decision as to what to do with the Chalk negotiations there was any consideration of any countervailing alternatives concerning compliance with the decree.

THE COURT: You mean exclusive of Chalk?

MR. KLINGSBERG: No, which related to your decision on Chalk.

A Well, the consideration to which I made frequent reference in my testimony that a spin off, a complete spin off of a good division was probably the best way to comply with the decree and the fairest thing to the United Fruit

stockholders, crops up again. I am sure it would be impossible to not consider and discuss that at any of our meetings.

We ware puzzled by Mr. Chalk's believe that for a million dollars he could acquire 51 per cent interest--

THE COURT: I thought he said somewhere ten to fifteen per cent with a maximum of 51 per cent.

THE WITNESS: No. He later changed, he said he wanted absolute control. There was a time--

THE COURT: I saw in one of these papers this morning he said at least ten to 15 per cent.

THE WITNESS: I think that's correct at the early stages. But there was a time when he told us definitely that he wanted absolute control, which would be 51 per cent.

Q Under those circumstances, then, he wanted notes to finance the additional amount, which was never set, is that correct?

A That's correct. That's correct.

Q And he didn't--

MR.BENDER: Under which circumstances?

Q He didn't want 51 per cent for a million dollars as such.

A Well, I don't know what he wanted. He talked about some notes and he never told us what amount. He kept emphasizing the fact that it had to be a real bargain purchase and--

THE COURT: In one of those memos he was up to about 40 or $50,000,000, as I recall it.

THE WITNESS: In one of his memos?

THE COURT: Sure. He estimated what the Tiquisate was worth by doing some calculation I couldn't follow, starting with 200,000,000, going down.

THE WITNESS: I think I recall that computation.

THE COURT: In any event, you never had a firm offer for a million dollars cash and $39,000,000 in notes or something like that?

THE WITNESS: Never, never.

Q Paragraph (C) of Article (A) provided for a transfer of a partial interest in the new company to an eligible person.

Was there any discussion or consideration of whether Mr. Chalk would meet that requirement?

THE COURT: You covered that. He owned a railroad and the Government didn't like the banana people to own a railroad, so I think we are repeating ourselves now.

Q Mr. Sunderland, I show you Defendant's Exhibit 372 for identification, which is a letter from Bump to Holcomb dated December 23, 1973, and ask if that refreshes your recollection in regard to the land sale situation at or about that time as it was reported to you in connection with your

consideration of the Chalk situation?

THE COURT: What date is that?

THE WITNESS: December 23, 1963.

A And this does refresh my recollection, to which I accurately testified that we found that more lands had been sold by our local people than we had then knew about in Boston.

Q And was there any reason why some of these commitments could not have been retracted?

A Oh, yes, we had made a good faith commitment through our authorized agent to sell at specified prices to a number of people in Guatemala, and our agent said that it would be unthinkable for us not to fulfill our commitment and we agreed with him on that.

Q Who were some of those people in Guatemala to whom commitments had been made?

A Well, many of them were cotton farmers or farmers who wanted to grow cotton, and this was the money-making crop at the time in Guatemala.

THE COURT: Just as a matter of curiosity, about how much an acre were you getting down there?

THE WITNESS: A hundred and odd dollars for some, a hundred for others on down to 40 or 50 for the pasture lands and undeveloped lands.

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Q Were there any commitments made to important peopl in the Government according to the information you received?

A I'd have to be refreshed. Do you have something to show me?

The report from our agent, dated December 23, 1963 to the general manager in the tropics, Mr. Holcombe, reports that he has made the type of commitments I just testified to and among those to whom he had committed the property was a Colonel Ponciano, who is the second man in the Government hierarchy, and our agent was very apprehensive that we would welch on an oil agreement with the second man in the Guatemalan hierarchy of the Government.

THE COURT: Unless it was in favor of the first man.

THE WITNESS: That's right.

[DIRECT EXAMINATION BY MR. KLINGSBERG, CONT'D:]

Q Mr. Sunderland, I show you Defendant's Exhibit 384 in evidence, which is a memorandum from Fox to Carpenter, dated August 21, 1963 marked copy to T. E. Sunderland, which states, "At the September 23, 1963 board meeting, Mr. Sunderland intends to present to the directors our current plan for the banana operations for the next five years."

I also show you Defendant's Exhibit 352, for identification, and ask you if you can tell us based on your review of the files which you have done in our office and from the document itself and the reference in Defendant's Exhibit 384 if it is your best judgment that Defendant's Exhibit 352 for identification is or is not your five year forecast as of September 1963?

A These papers came from my file and they were clipped together. I have examined them carefully and I believe this was the plan, the thing labeled, "Banana Five-Year Forecast" is the plan referred to in the memorandum of August 21, 1963.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE

Q Would you look at Defendant's Exhibit 352 for identification and tell us whether that represents a summary of your thinking in regard to the future plans for United Fruit's banana business as of approximately the time you also recommended to the board of directors that Guatemala west plantation be liquidated?

A The papers labeled "Banana Five-Year Plan" are a small edition of some large cardboard presentations that I was going to use on an easel for presentation to the board of directors so everyone could see them. These are a smaller edition of those same charts.

It is my recollection that I used these in presenting to the board our plans for the ensuing five years and part of those plans involved the phases out of the Tiquisa Division.

MR. KLINGSBERG: I offer Defendant's Exhibit 352 for identification, which is the document entitled "Banana Five-Year Forecast" into evidence.

MR. BENDER: Is the purpose of the offer just the fact that this was presented to the board?

THE COURT: I gather that's what it is, yes.

MR. BENDER: If that is the limited purpose, I have no objection, your Honor.

MR. KLINGSBERG: It is offered to show what

Mr. Sunderland's and the company's motivations and plans were as of September 1963 when they decided to liquidate Tiquisate.

THE COURT: I will receive it.

MR. BENDER: May I see the covering letter.

MR. KLINGSBERG: Yes (handing).

THE COURT: When was this prepared, Mr. Sunderland?

THE WITNESS: It was prepared prior to this September board meeting, September 23rd, whatever the date was, in the few weeks immediately preceding that meeting.

THE COURT: The 1963 figurew are estimated, as well as the rest?

THE WITNESS: Yes, thatis correct.

(Defendant's Exhibit 352 was received in evidence.)

Q Mr. Sunderland, there is reference in Defendant's Exhibit 352 to the plan for closing down some other divisions as well as Guatemala west. Do you see that?

A I do.

Q Did you or your associates perform the same or similar kind of analysis in regard to various agronomic and financial factors pertaining to the Colombia, Dominican Republic and Nicaragua closing as Tiquisate before you decided to close those places down?

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UNITED STATES COURT HOUSE
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A The same general procedure was followed in all cases.

THE COURT: Were they all closed down eventually?

THE WITNESS: Yes. The Santa Marta, Colombia was closed down, the Dominican Republic, Guatemala west and Nicaragua. All four of those were closed down.

For your information, your Honor, under Colombia, where we talk about the divisions being phased out, under Colombia there are two entries, one Federation and one Santa Marta. The Federation was a group of independent producers from whom we purchased, and it shows we were phasing out those purchases as well as those plantations, which is called Santa Marta.

Q Did you also plan at this time to eliminate Ecuador as a regular source of supply?

A We planned to eliminate Ecuador as rapidly as we could acquire the necessary production from our own divisions and I think at this time it shows the date when we thought we could do that.

Q And did you anticipate that there would be ultimately complete conversion of the market from Gros Michel and stem shipping to Valery and box shipping?

A Yes. It was very, very clear by then that was the trend of the market.

THE COURT: At that time you have Guatemala east on a declining basis, seriously declining almost to one half by 1968. That didn't follow, did it? It didn't happen?

THE WITNESS: No. As soon as we could get Valery seed to go back in there, we did, but we had no Valery seed to start with in Guatemala and it took time to get it there.

Q What happened to your Turbo Division? Where did most of the fruit from that division go to?

A Almost all of the Turbo fruit went to Europe.

Q And that was Gros Michel fruit?

A Yes.

Q Was there any difference between the quality of the Gros Michel fruit that you had been getting from Turbo and the Gros Michel fruit that you had been getting in the past from Tiquisate?

A Yes, yes, there was. We had no winds to bother us in Turbo, we had no Panama disease in the soil so that we had healthy plants and they were always mature plants, not ones that had been recently blown over, which always caused a drop in quality until the plant reestablished itself.

Q Can you tell us looking at Defendant's Exhibit 388 in evidence when the first shipments were, approximately,

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from Turbo?

A You have shown me a letter dated March 25, 1964 in which I comment on a report about the first Turbo loading and that it was very excellent fruit, and I would -- this would refresh my recollection that the first shipment out of Turbo was in the weeks immediately preceding the date of this report.

Q Didyou get any information from European purchasers as to whether they preferred the Turbo fruit or the old Gros Michel fruit you used to get from Tiquisate?

A Oh, they were very clear on that. I was in constant touch with our European outlets and they did not like the Tiquisate fruit, it was not good quality, it was not of good grade, it didn't have the weight and it was often a short-fingered fruit.

The Gros Michel, and in particular the Cocos, which is a form of Gros Michel out of the Tiquisate Division, had short fingers, which was not well accepted in the market and usually had to be sold at a discount. The Tiquisate was characteristic of that kind of poorer quality, and the Turbo fruit was fine, big, well-developed fingers of banana.

Q Was Europe slower or faster to accept the change-over to Valery?

A Slower.

Q And did that influence you to decide to continue Turbo as a Gros Michel plantation?

A Yes. Oh, very definitely.

We had a sales problem in Europe to convince them that the Variety banana was a good banana and we made very little progress in the early stages and I was very happy that we had at least one good Gros Michel Division that we could ship from to Europe.

Q There is one document to which objection had been made. It is a memo from Mr. Miller to Mr. Sunderland dated April 13, 1961 which Mr. Bender had marked for identification as Plaintiff's Exhibit 133 and we have renumbered as --

MR. BENDER: Who is that from? Can I see it?

MR. KLINGSBERG: We have renumbered it 476 for identification.

MR. BENDER: Can I see it?

MR. KLINGSBERG: Yes, Mr. Bender.

Mark that for identification, please, as 476.

MR. BENDER: Do you have a copy?

MR. KLINGSBERG: It is your Plaintiff's Exhibit 133, Mr. Bender.

(Defendant's Exhibit 476 was marked for identification.)

Q Is Exhibit 476 for identification a document which

you received in the regular course of business and which it was the regular course of business of United Fruit to make and keep?

A The memorandum you have showed me, dated April 15th of 1961, is a report to me from the head of our agricultural operations outlining briefly the present situatio and circumstances of production in the Turbo area.

Q Was that considered by you in connection with your determinations of which divisions to develop and which not to develop?

A Oh, yes. This is one of aseries. I had reports from all the divisions regularly and this is certainly one of them.

MR. KLINGSBERG: I offer in evidence Defendant's Exhibit 476 for identification.

MR. BENDER: Can I see it, please?

MR. KLINGSBERG: Yes. (Handing to Mr. Bender.)

MR. BENDER: I have no objection, your Honor.

THE COURT: Received.

(Defendant's Exhibit 476 received in evidence.)

Q Mr. Sunderland, I show you Defendant's Exhibits 400, 20, 21, 22, 23, 24 and 25 in evidence, and ask if you would tell his Honor what those are?

MR. KLINGSBERG: If your Honor please, I have a set of these, but they are in color and it is a little difficult to follow if you don't have the colors, so I will hand the Court a set, but if you want to see the colors, perhaps you could see over the witness' shoulder.

A The documents you have just shown me came from my files. They were attached to a little memorandum which my secretary wrote me saying that Mr. Frank Keaney had brought these charts over and said I might want to talk about them.

In my handwriting below the typed message, is my dating, August 1964, which helps me place the date when I received these, and attached are a number of charts, the numbers of which I guess you read into the record.

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Q Do these charts represent the company's plans as of mid-1964 for the five years from 1965 to 1969?

A They do.

Q I would like you to explain some of these charts to the Court.

First, let me ask you generally, by eliminating certain of these divisions to which you have testified, including Tiquisate, and shifting over to Valery production, was it the company's plan or intention to reduce the amount of its production?

A No, on the contrary. Our plans all showed that we were going to increase the amount of our production. That was one of the purposes of going to Valery.

Q Would you look first at Defendant's Exhibit 21.

Could you tell the Court what that shows? Maybe you could hold this up so the Judge can see the colors.

THE COURT: I have a copy.

A Alongside the big chart are some colored charts, which are keyed. Part of it would be--there are two sets of columns for each year and the chart I am looking at is labeled at the top "Acres in Bearing for Company Division" from 1965 to 1969.

These is what we would estimate to be our acres and bearing, and on the left in color is shown what would be

growing on those acres, the red being the Valery, the green the Cocos and the balance, Gros Michel.

The interesting part, your Honor, is how the Valery increases as we go along.

THE COURT: So that you end up in 1969 with eight per cent Gros Michel, is that it?

THE WITNESS: That was the though of--

THE COURT: And 69 per cent is Valery?

THE WITNESS: Right.

THE COURT: I think I understand it.

THE WITNESS: Yes.

I think actually when we got into it, it went faster than we thought it would and I think by 1969 the percentage of Valery were greater than this, but this was the estimate at that time.

Q Would you show the Court, please, Defendant's Exhibit 22.

What does that show?

A Number 22 is entitled "Acreage Planted and Abandoned, Company Divisions, 1965-1969."

Again, there are two sets of columns, a central column, a broad column that is in two parts. Under one part there is the initial P, which means planted, and then there is the initial A, under the second half of the column,

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meaning abandoned.

So you can see from this chart the acreage which we planned to plant, the acreage we planned to abandon.

THE COURT: Is that going to be new planting or is that total planted?

THE WITNESS: Well, your Honor, it is at times hard to distinguish between new planting which required new preparation of land versus planting into old areas which were already graded and drained and so forth.

THE COURT: I can assume this means total planted?

THE WITNESS: This is total.

Again, it is colored key at the side as to Valery, Gros Michel, Cocos and Lacatan.

Q Can you show the Court where the Valery planting are on the colored chart.

A As the key indicates, Valery is the red and all of the new planting, for example, in 1965 is color-keyed--well, there is a little tinny thing up there in green, which is Cocos, but for all practical purposes it is all Valery.

For 1966, 1967 and 1968 all the new planting is Valery.

On the other side of each column also color-keyed yellow and green indicate--

THE COURT: Abandoned?

THE WITNESS: Yes, what was in the abandoned area.

Q Did you plan to abandon other areas when they were planted in Valery?

A No. This was the great thing about Valery. We anticipated, and it turned out to be true, that once we got a Valery Division established, we could go on producing for years without any disease problem, if we could keep things like Sigatoka, Moko and what not, under control, and we knew how to do that and we did do it and we did it successfully.

Q So that you could plant less and less each year, but since your abandonments were less because you didn't have Panama disease, you could still keep your production up, is that correct?

A That is absolutely correct.

Q Defendant's Exhibit 23, what does that show?

A The heading is "Production Per Acre in Stems, Company Only, 1963-1969."

Q And as a result of Valery, did you anticipate getting a higher yield per acre?

A In 1963 we were getting on the average 233 stems per acre. We anticipated that with our planting program with the Valery that by 1969 we would have 363 stems per

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acre.

I think our actual experience showed even more than that, but this was the current estimate at that time.

Q I ask you to look at Defendant's Exhibit 24.

MR. KLINGSBERG: The rest are not in color, if your Honor wants to follow on your set.

Q Can you tell us what the heavy line represents?

A Exhibit 24 is headed "Shipments and Production in Stems, Company Divisions for 1960 through 1969."

The heavy black line is identified on the chart as stems shipped and production estimates before reserves for abnormal losses.

Q So would it be fair to say that despite the closing of some of these divisions, you anticipated a growth in production from something a little over 25,000 stems to between 40 and 45,000 stems by 1969?

MR. BENDER: You mean millions, don't you?

MR. KLINGSBERG: Million stems by 1969.

A Yes, you are quite correct, in the millions.

It shows a very dramatic increase in the production we believed we could get and did, in fact, get.

Q Does the chart show what production you might have gotten if you continued to plant Gros Michel on the same acreage?

A Yes. There is a broken line called "comparable production estimate for the production at a 1963 rate per acre," and it is not quite a flat line, but it certainly doesn't increase very fast.

It ends up from the same acreage getting, oh, 27- or 8,000,000 stems versus 43-or 4,000,000 stems, which we would get with the Valery production.

Q Would you look at Defendant's Exhibit 25.

First of all, in actuality, does that exhibit present the reduction in capital expenditures to which you testified earlier in your testimony during the so-called transitional period while you were still working on the commercialization and development of Valery?

A The experimental period of '60, '61, '62, is shown by the low point on this chart. It is quite obvious what the years are and if you look just above the year 1960 or 1961 or 1962, you will see a low point, which is what the new plantings--capital expenditures for new plantings that we did then while we were trying to evaluate the commercial possibilities of Valery.

As we became more sure of our position on Valery, we started to plant more. Then, again, the curve comes down because once we have planted we have no abandonments from the Valery and this, of course, was the key to the hoped-for financial development of the company.

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MR. KLINGSBERG: Now, I would like to have marked Defendant's Exhibit 26 for identification.

xx (Defendant's Exhibit 26 marked for identification.)

Q It is a handwritten chart entitled "Additional Acreage Required."

I ask you if that was a part of the package of charts that you just reviewed as contained in your file?

A Yes. This sheet was attached to this material I have been talking about.

Q Was the information in this document, Defendant's Exhibit 26, considered by you in your decision-making process?

A It was.

MR. KLINGSBERG: I offer Defendant's Exhibit 26 for identification in evidence.

MR. BENDER: At what time was this considered?

THE WITNESS: August of '64.

MR. BENDER: If I may, your Honor, may I make one inquiry?

THE COURT: Yes.

MR. BENDER: Were all the other defendant's exhibits from 20 to 25 also as of that same date, August, '64?

THE WITNESS: I think so. They are all attached behind this cover sheet that says August, '64.

MR. BENDER: And could I determine whose handwriting that is on that document?

THE WITNESS: That's mine.

MR. KLINGSBERG: Where it says August 24 on DX 400 or the handwriting on DX 26?

MR. BENDER: The handwriting on DX 26.

THE WITNESS: The handwriting on 26 is not my handwriting.

MR. BENDER: Do you know whose it is?

THE WITNESS: This came out of our production group, and I believe this would be the handwriting of the Frank Keaney mentioned in Defendant's Exhibit 400, who brought over these charts to me when they were ready, and I think this was an additional chart that he thought would be interesting to me and he just roughed it out in handwriting rather than preparing a formal printed chart.

MR. BENDER: What is the writing over in the righthand side?

MR. KLINGSBERG: We have the original here.

THE WITNESS: On the original, which did not show up on the Xerox copy, in my handwriting is the notation: "Show acreage for Valery."

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UNITED STATES COURT HOUSE
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MR. BENDER: I have no objection, your Honor.

THE WITNESS: I don't know what that means, but it's there.

xx (Defendant's Exhibit 26 received in evidence.)

BY MR. KLINGSBERG:

Q Would you explain, please, for the Court, what Defendant's Exhibit 26 purports to demonstrate?

A The heading reads: "If it had been necessary to secure from Gros Michel cultivation the volume of stems shipped or boxed in Guatemala East, Honduras, Golfito, Armuelles and Bocas during the '60 to '65 period, considerable additional acreage would have had to have been planted, assuming that suitable land for Gros Michel could have been found."

Then under it is a chart with a heading:

"Estimated Additional Cost during 1960-1965", and there is a tabulation of two figures, first, capital expenditures $34,000,000, operating costs for farm maintenance, 22,000,000.

There is also a line chart with some years at the bottom and thousands of acres showing on the verticle scale and it would show that our acreage by 1965 would be up in the neighborhood of 35,000 or 36,000 acres.

That line is labeled on the chart "Additional Acreage Required."

Q What is the conclusion from this chart as to the amount of additional acreage and additional capital expenditure you would have needed if you wanted to get the same results from Gros Michel as you planned to get from Valery?

A This is further evidence of what I testified to yesterday, that our costs in continually going into new areas and continually moving away from areas that had become-- that had Panama disease, was such a crippling capital expenditure, that we couldn't live with it and that the only way I could get this company into a profitable basis was to some way or other, go to a banana that did not require this constant expenditure for new acreage and constant expenditure for new operating costs.

This is the reverse of what I have been talking about on Valery where these things did not happen.

Q Just in terms of shipments from Guatemala, did you eventually expand and develop Bananera or Guatemala East for Valery production?

A Yes, we did.

Q Did there come a time during your period of service with the company, when the Bananera East production and the exports from Guatemala coming out of that plantation were at least equal to, or more than what had previously been pro-

duced in the early 1960's of Gros Michel bananas from Tiquisate and Bananera put together?

A I am aware of the fact that Bananera produced more than both sides of Guatemala had produced together. I would have a little trouble without some figures to fix the date at which that production reached that stage. But there is no question it reached it.

Q Looking at this chart, can you tell us where were the Guatemala bananas sent to during the early 1960's?

A They went to anyone of at least four different ports. New Orleans with Mobile as an alternate. I speak of that collectively as one port because sometimes a ship put into Mobile as an alternate only. But New Orleans would be one major port of importation, Baltimore--the next most important one was, of course, New York.

Of lesser important would be Baltimore and Charleston. They had shipments periodically but not frequently.

Q How about Mobile?

A I testified that I included Mobile in New Orleans as a kind of an alternate for New Orleans. It never took the place of it. It was just an alternate.

Q Which other of your plantations exported bananas to those areas?

A We had freedom to export from any of our produc-

ing areas to any of those ports. One of our important jobs every week was to try to schedule where the bananas would come from and the ports to which they would be sent, and we had a group of people that worked on that regularly as their regular assignment.

Q Was it a fact that from time to time bananas from all of our other plantations were exported to these areas that you mentioned for the Guatemala bananas?

A Oh, yes. The flexibility of the company was an important asset and we kept that flexibility at all times.

Q Did the Guatemala bananas compete in these ports for purchases from the jobbers with the bananas from all the other areas that you imported from?

A Oh, yes, of course.

Q Did you ever send any Guatemalan bananas to the West Coast of the United States?

A I don't remember any. It would have been an expensive shipment because we had two good producing divisions on the Pacific side of the Panama Canal, Golfito and Armuelles, and I don't remember any catastrophe at those two divisions simultaneously that would have required bananas to come around from the Atlantic side.

Q Did you ever also send bananas from Ecuador to the West Coast of the United States?

A And to the East Coast. We sent them both places.

Q Did there come a time when you shifted the bulk of your export of the Tiquisate bananas from the United States to Europe?

A Yes, yes. The quality of the Tiquisate banana got poorer all the time and we could sell that quality of banana a little better in the European market than we could in the American market.

Q I believe you have already testified that CAG owned the Tiquisate plantations, is that correct?

A Yes, correct.

Q Was CAG engaged in the sale of bananas in the United States market?

A No. All sales in the United States market were handled by a sales subsidiary of the fruit company called Fruit Dispatch Company.

Q And to whom did CAG sell the bananas it produced at Tiquisate?

A To the Fruit Dispatch Company, our sales subsidiary.

Q Is it fair to say, then, that CAG was engaged principally in the business of the production of bananas to be sold to another subsidiary of the United Fruit or to United Fruit itself?

A That would be correct.

Q You were an officer, were you not, of both CAG and United Fruit?

A I was.

Q Were the corporate formalities in regard to minutes, resolutions, authorizations and the like, required for CAG as a separate corporation observed scrupulously?

A At all times. We were very careful in that.

MR. KLINGSBERG: No further questions, your Honor.

[CROSS EXAMINATION BY MR. BENDER:]

* * *

Q And after the Court of Appeals decision, did you make a detailed study of the situation?

A Of the Court of Appeals opinion, I certainly did.

Q The Court of Appeals opinion?

A Yes.

Q And did you also refer to Referee Hammer's decision at that time?

A I don't believe so.

THE COURT: Did you look at the judgment that was affirmed?

THE WITNESS: Oh, yes, yes.

THE COURT: The judgment below?

THE WITNESS: Yes. Oh, sure.

I might say, your Honor, this was a complicated case and I relied primarily on advice of counsel as to what it said and what the provisions were and what we had to be

careful of.

THE COURT: I take it as operating as chief executive officer you would want to know what the judgment said you could or could not do or should do?

THE WITNESS: I very definitely knew that.

THE COURT: Especially since you were a lawyer.

Q And that was correctly reported at that time, isn't that right?

A I am sure it was, yes. I might add, and I have said this before, but I might add that our hopes that boxing would develop better quality fruit out of the Tiquisate Division broke down into two categories.

The first damage was less as a result of the boxing. We had other damage that we had not anticipated in the early stages in that the box retained the Tropical heat for a while, then when the shipment went over the mountains it cooled down, then it came back to sealevel again into the tropical climate and went into our ship where it was refrigerated, and those changes in the temperature became difficult to handle and with the Valery it became

a very serious problem because the Valery once it starts to ripen, you can't stop it.

Q Did they actually experiment with boxing Valerys at Tiquisate and shipping them over the railroad?

A Yes.

Q You are sure of that?

A Yes.

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WILLIAM VAN DIEPEN, called as a witness by the defendant, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KLINGSBERG:

Q Mr. van Diepen, would you tell the Court briefly your college and graduate school education?

A I graduated in 1935 from the University of Toronto in Canada, with a Bachelor of Science in Agriculture, in 1937 from Louisiana State University with a Master's Degree in Agronomy.

Q What is your present position, sir?

A I am Vice President of Research and Development for United Brands, Banana Group.

Q How long have you been employed with United Brands or its predecessor, United Fruit Company?

A Since May of 1937.

Q And did there come a time when you went to work at the Tiquisate Plantation?

A I went to Tiquisate on June 30, 1956.

Q Prior to that time, what was your position?

A Well, I was employed by United Fruit in 1937 as a timekeeper.

Q Just give us the position you held just before you came to Tiquisate, to save time.

A I was Assistant Manager of the Tela Railroad Company.

Q Is that the name of the United Fruit Company Division in Honduras?

A That's correct.

Q Would you tell us briefly the positions which you held at the Tiquisate Plantation in CAG, and the time period?

A Well, in '56, I went over as Assistant Manager in Charge of Production, and then in October of '59, I was made manager until September of 1960.

Q And after that, what position did you move to?

A Then I moved to Boston in September of '60, and became Assistant Vice President in the Agricultural Department.

Q For whom did you work at that time?

A For Mr. Miller.

Q And were you Mr. Miller's agricultural advisor?

A That's correct.

Q And since that time, have you held various positions in research in Boston?

A In July of 1961, I was made Director of Research for United Fruit.

Q Have you been in charge of Research ever since?

A That's correct.

Q During the period of time that you were in Boston as Mr. Miller's Agricultural Advisor and later Director and Vice President of Research, did you stay in Boston, or did you make periodic trips through the Tropical Divisions?

A I made periodic trips through the divisions in my capacity as Assistant to Mr. Miller and as his Agricultural Advisor.

Q Did you also make trips in your capacity as Director of Research?

A That's correct.

Q Did you periodically visit the Tiquisate Plantation?

A That's correct.

Q Would you tell his Honor briefly, what are the basic components of the banana plant?

A Well, you have the rhizome and root system, then you have the pseudo--

Q What is the function of the rhizome?

A The rhizome and root system, that is to take up nutrients from the soil and to produce your pseudo stem, which--

Q In lay terms, what would a rhizome be?

A It is like a potato, a tuber, like a potato with eyes.

Q Does a banana plant have a seed?

A The banana is reproduced by a rhizome with buds, or eyes, just like a potato is.

Q Now, you are telling us about the stem.

A Then you have the pseudo stem, which comes from the rhizome, and it is made up of a number of overlapping leaf sheaths.

Q How much of the stem is water?

A Eighty per cent.

Q Can you describe the strength of a stem of a banana plant? Is it like a tree?

A No, it is not a tree.

It is what we call--it is a pseudo stem. In other

words, it is a false treet. It is made up, like I say, with these overlapping leaf sheaths, which produce a canopy of broad leaves.

And then, after about nine to ten months, why, it produces a bud, which has the fingers, the bunch that is going to be eventually the fruit, and each bunch will have anywhere from nine to ten, eleven hands.

Each hand has about anywhere from 15 to 18 fingers which are your bananas.

[VOIR DIRE EXAMINATION BY MR. BENDER:]

* * *

MR. BENDER: Well, your Honor, well, let me ask him some more questions on this.

Q Sir, isn't DX 7 distorted in that you have included one year for Tiquisate in which there was a hurricane which eliminated many of the CAG plants in that particular year?

A Well, this is 1959 to 1963, and this takes in a lot of hurricanes, you can see there that Tiquisate is the highest of your stems lost per acre.

In other words, we have there hurricanes every year. Sometimes we have gotten hurricanes, sometimes we have got up to 16 different hurricanes a year.

[VOIR DIRE EXAMINATION BY MR. BENDER, CONT'D:]

Q Now, isn't it a fact, sir, that as a division gets down to a liquidating level, like Tiquisate was, that there is a greater tendency to losses by blowdown because of the fact that the maintenance is not kept up?

MR. KLINGSBERG: I object to that question. There is no evidence of that in this period.

THE COURT: Well, he is asking him.

A Insofar as I was concerned, all the time that I was in Tiquisate the maintenance was kept up right up until the last.

Q But you were there only up until 1960?

A That is correct. But I went back and forth every year. I represented Mr. Miller, so we kept the division right up to snuff up to the last.

[DIRECT EXAMINATION BY MR. KLINGSBERG, CONT'D:]

Q Can you describe for us, Mr. van Diepen, from your own observation the nature of the wind problem which

jgrf 6 van Diepen - direct

existed at Tiquisate?

MR. BENDER: At what time?

MR. KLINGSBERG: During the period 1956 to 1963.

THE COURT: '56 or '59?

MR. KLINGSBERG: Well, he was there beginning in '56.

THE COURT: No. But I want to see whether it is comparable to the chart. Are you following the chart or are you going beyond the chart?

MR. KLINGSBERG: I am just asking for his personal observations, to describe what actually happened. So I am not going into figures at this point.

MR. HANDLER: Break it up into two questions.

Q Let's take the 1959 to 1963. Tell us what kind of problem there was with the wind.

A Well, it was during, let's say, from February -- we had February to October we were vulnerable as far as blowdown winds. And these blowdowns, these wind storms and the rain storms would come from the base of the volcanos, and the winds would be anywhere from 32 -- they have been clocked up to 59 miles an hour, and they would come into the plantations, you don't know where they would hit, and some places they would take everything right to the ground, and these winds, they skip, they would knock out the fruit

that is hanging, so you would end up with quite a devastation in your farms.

Q What would happen to the banana plants under these circumstances?

A The plants with fruit would be blown over, would be doubled and the fruit would be lost. The plants without fruit would be also doubled over. The plants with fruit could be uprooted. We lost an awful lot by uprootings. These uprootings would have to be replanted.

THE COURT: With the same stems or different stems?

THE WITNESS: We would use the sucker from that uprooted plant.

Q Now, when a banana plant which had not reached the stage of maturity was blown over, what would you have to do with it?

A Well, you have to go through the plantation and you have to chop everything down. You have to cut that pseudo stem through and get that plant, the top of the plant, the leaf canopy and the plants with fruit, and that is all lost. You have got to chop them down so that you can prepare that plant so that the suckers will grow up for the next crop, which would be, if it is a bad blowdown, in 12 months.

In other words, you have lost production for on the average of 12 months.

jgrf 8 van Diepen - direct

Q Now, apart from the severe blowdowns which you have mentioned, was there any other wind problem at Tiquisate?

A Yes. We had a wind commencing the middle of January until about the end of May off the Pacific, and this wind was quite strong. It would start up at noon, wind whip the leaves, and this would increase the scarring of the fruit. It would also double some of the weak plants. This would be primarily what this wind damage would do.

We have clocked this wind up to 23 miles per hour off the Pacific.

Q Now, did the soil at Tiquisate have any effect on the extent of wind damage?

A Well, with your very bad wind storms, the Tiquisate soil is mostly of volcanic origin, very light, fluffy, and in a lot of places you wouldn't call the soil deep.

In other words, you would run into a lot of substrata of sand.

So, consequently, the uprootings were worse when you got into this type of soil.

Q What kind of soil comparatively did you have in Armuelles, Honduras, Bocas or Golfito?

A All the soil in other divisions are all laid down by rivers, known as alluvial soil.

Q And how does that compare?

jgrf 9 van Diepen - direct

A Well, these soils are deeper soils. They contain what we call more body. They are not as fluffy and as light as the volcanic soil of Tiquisate.

Q Now, when you have a blowdown, how long does it take to get the banana plants that are blown down back into full production?

THE COURT: He said a year, before, if it is a severe storm.

A Approximately a year.

Q And did the blowdowns have any effect on the weight of the banana stems coming out of Tiquisate?

A Well, unfortunately, every time you have a blowdown you can look for this what we called first year crop again, where your bunches are small and you have shorter fingers, and it is not what we call top quality fruit.

So, consequently, Tiquisate was always in the position where 40 to 50 per cent, why, you were always shipping this poor quality fruit.

Q Now, you mentioned the fact that the blowdowns generally, the severe blowdowns are generally from January to October. We have had testimony about a November 1961 blowdown. Did that occur unusually late in the year?

A Yes. Once in a while Mother Nature does that to you. And that was a particularly bad one in Tiquisate.

That was a tremendous loss, November 1st, I think, 1961.

Q Did United Fruit Company try to do anything to lessen the wind storm losses?

A Yes. United Fruit, why, we planted -- while I was there, we had -- we tried crop pruning. That was one of my programs. But unfortunately with crop pruning, you try to bring the cropy in before the wind hit you. We had so many different winds in Tiquisate that it was just not practical. It was very uneconomical.

Q So did you then stop doing that?

A We curtailed it. And my predecessors tried wind breaks, and that didn't work either. That wind jumps right over those wind breaks.

Also the winds are so strong that it knocks out a lot of the wind break trees.

Q Now, did there come a time when you tried to plant a lower growing type of banana to lessen the wind storm losses?

A Yes. We came up with the Cocos banana, which is a sport of the Gros Michel. It is a mutation or a sport. We call it a sport, s-p-o-r-t, of the Gros Michel.

It is a lower growing variety. The fruit was inferior. It was also susceptible to Panama disease, like the Gros Michel.

jgrf 11 van Diepen - direct

Q How did that affect the long term future of the Cocos?

A Well, when we first started out, we had high hopes for the Cocos. But as we went along, we had seedbeds and we had demonstration plots in Tiquisate of the Cocos, and as we went along, why, we found that the Cocos resorted to type.

In other words, it got taller, like the Gros Michel, and the fruit was inferior -- in other words, shorter fingered, openhanded bunches, not as good as the Gros Michel, plus the added bad feature that it was susceptible to Panama disease.

BY MR. KLINGSBERG:

Q What, if anything, were the ultimate results of the Cocos plantings so far as blowdowns were concerned?

A Well, we suffered -- as we got out into the demonstration plots, the Cocos also suffered windstorm losses. This was, like I say, a disappointment. And again, the fruit was even worse when we had these blowdowns because the next crop was pretty poor.

Q How did the Cocos root system compare with the Gros Michel?

A Well, being a shorter growing plant, the root system was a lot shallower.

In other words, the root system was plentiful for the size of the plant, but it did not go down as deep as the Gros Michel.

Q Did that have an affect on windstorm resistance?

A It also was a disadvantage when it comes to standing up against strong windstorms, right.

Q Now, Mr. van Diepen, I think when we diverted from the order of topics to review the various charts together, we were talking about the Cocos banana and you had described the fact that that banana was subject to Panama disease, is that correct?

A That's correct.

Q You also described what happened in regard to the Cocos banana from windstorms, when it, as you say, returned to type.

What did you mean by that, returned to type?

A Well, it got taller, like the Grcs Michel, and the fruit was inferior, smaller bunches, shorter fingered fruit. In other words, it was not as good as the Gros Michel, with the other disadvantages of susceptibility to Panama disease.

Q Did there come a time when the United Fruit Company, and its subsidiaries stopped plantings to Cocos banana?

A That's correct.

Q Approximately when was that?

MR. BENDER: I object, your Honor. I think we should have documentation on when they stopped instead of the witness' recollection. There is documentation that they

can have.

THE COURT: I think it would be better, if you have them, yes. But I'll take it for the time being until you can find your papers, subject to connection.

THE WITNESS: 1963. I think I recollect 1963.

THE COURT: 1963 was what?

THE WITNESS: That we stopped planting Cocos bananas.

THE COURT: Cocos.

Q Mr. van Diepen, would you explain to the Court, please, what Defendant's Exhibit 10 in evidence shows?

A It shows damage in transit, percentage of stems rejected at the wharf. In other words, at Tiquisate this shows the fruit that is damaged after it reaches Barrios, which is 300 miles from Tiquisate, over the railroad in the railroad cars, and the rejects are from bruising and scarring and ripes and turnings. And it shows here that Tiquisate is much higher than either of the other divisions, Bananera, Armuelles, Honduras, Bocas and Golfito, and this railroad trip is very, very hard on the fruit.

Even though we went to all ends to try and pad the railroad cars with leaf sheaths and we put polyethylene tubes on the fruit, why, we still ended up with a lot more rejects in Barrios that couldn't be loaded on the ship.

Q Mr. van Diepen, did you ever ride that railroad with the bananas?

A Yes, I sure did.

Q How many times?

A During my period in Tiquisate I rode it three times.

Q Would you please describe the trip step by step, referring where relevant to what was happening to the bananas across the isthmus?

MR. BENDER: I object, your Honor. I think we had that through Mr. Haase as to the nature of the trip.

THE COURT: It seems to me. I don't know. Isn't it cumulative?

MR. KLINGSBERG: I would prefer to have my own witness give additional facts to what Mr. Haase testified to.

MR. BENDER: And in addition, your Honor, he said he only made the trip three times. That wouldn't be representative.

THE COURT: Well, on that basis, I'll overrule it. He was the manager and it was his duty to know about it.

But can you add anything more to this than it starts in a tropical, low ground, with very humid and hot weather, and it has to cross the mountains and that goes down to about 60 or 50 degrees, and then it comes back into the plains and it is hot again? Can you add anything to that?

THE WITNESS: Well, no, except that it is a rough ride, your Honor, very, very rough as compared with any of the other divisions.

THE COURT: What do you mean, rough?

The rail bed is poor?

THE WITNESS: The rail bed is very poor, the ride is very rough because the train is stopping and starting, and that jerks the fruit and that fruit produces, one stem

would bruise another stem.

So this is the reason for this high rejection down in Barrios.

Q Is any part of that trip through desert?

A Through the Zacapa desert after it leaves the Guatemalan highlands. Here again, in this desert, for half the year, why, it is very, very dusty and the cars pick up the dust, the fruit picks up the dust, and this also adds to the abrasion of the fruit.

Q How does the dust abrade the fruit?

A The dust gets on the fruit, and with the rubbing between the fingers, or the rubbing between the stems, why, you get abrasion.

THE COURT: By abrasion you mean an actual tear in the cover?

THE WITNESS: Yes, an actual tear in the skin.

Q Now, you mentioned the highlands. Do the trans stop off in the highlands for any purpose?

A Yes, to change crews and also for checking the trains, the maintenance crews.

Q Do they stop in the daytime or at nighttime in the highlands?

A They usually stop night.

THE COURT: How long is that trip from Tiquisate,

or wherever you pick it up there, to Puerto Barrios?

A Thirty to 35 hours. But it got so that they were going beyond 35. While I was in Tiquisate, it would run anywhere from 30 to 35 hours.

THE COURT: It is only 300 miles.

THE WITNESS: That's correct.

THE COURT: What is that? Less than ten miles an hour?

THE WITNESS: Yes, your Honor.

BY MR. KLINGSBERG:

Q His Honor mentioned to you the previous testimony regarding the change in temperatures.

What was the chemistry or physiology of that change in temperatures insofar as it affected the bananas?

Well, your banana, when it is loaded, it's got a lot of heat in the pulp, and when it goes up to the highlands, why, with that cold in the highlands, why, it reduces that pulp temperature down; it could go down as much as 20 degrees.

And then, when it leaves the highlands of Guatemala City, and goes down to Barrios, why, it starts heating up again and it will get--the pulp temperature, by the time that fruit is loaded on the ship, could be 85, 90.

And when you do this to bananas, when you got heat and cold and heat, why, it triggers that chemistry, that ripening process.

In other words, if the grade is a little too high, why, which means the banana is more mature, it triggers it and it is prone to ripe.

So this is part of the deal in Barrios, where you do have rejection because of turning fruit, ripes and turnings.

Q What do you mean, ripes and turnings?

Isn't it good to eat bananas when they are ripe?

A Well, this is in Barrios. We haven't got it on the ship yet.

Q What do you mean by a ripe?

A The banana is ripe.

Q If it is ripe in Barrios, how is it when it gets to the U.S.?

A It doesn't go to the U. S. We throw it away in Barrios.

Q Why?

A Because it is ripe. In other words, it won't carry. We deliver green fruit in the U. S. That is the reason for the refrigerated ships, where you can carry your fruit green under refrigeration.

4b am jgrf 1 van Diepe - direct

Q Now, did you try to do anything about the fact that the bananas were arriving ripe and had to be thrown away at the wharf?

MR. BENDER: I object. I don't think he said that all the bananas were arriving ripe.

MR.KLINGSBERG: Not all the bananas; the percentage indicated on the chart.

A Included in this figure?

Q Yes. Did you try to do anything with regard to your harvesting schedule?

A Yes. We were trying at that time to do everything in Tiquisate, while I was there, to keep production up because of these heavy blowdowns. So we tried boxing. We tried boxing of Gros Michel, and we tried boxing on the railroad, we tried boxing in refrigerated trucks, with the permission of Mr. Haase. I talked to him personally.

So this is what we tried to do to see if we could improve the carrying of the fruit to Barrios.

Q What happened in regard to the boxed bananas on the trains?

A Well, the boxing started out fairly well because we nursed it along. But as we got into increased production, the fruit in the boxes just got thrown around and jumbled. The fruit would arrive in Barrios jumbled and there was

just maybe not as much scarring and bruising as the naked stems, but the other big factor that we had this field heat in the boxes and the boxes held this field heat and then we would go through this cooling again and the heating of the fruit.

When those boxes hold that heat, why, we have more ripes and turnings. We may have had less scarring and bruising. but we got into more ripes and turnings, particularly on discharge.

Q Did you try to do anything with regard to the time when you harvested the fruit in order to help you on this ripening problem?

A Well, we didn't harvest, start harvesting until the IRCA told us that the cars would be delivered at the farms. In other words, we couldn't do that until we knew that the cars would be there and we could start to cut. And cutting started usually early in the morning, as -- well, daylight. You have to be able to see the fruit to harvest it.

Q What does grade mean? You mentioned that term.

A That is the maturity of your bananas. On the average in Tiquisate, why, the maturity period would be about 92 days. And so, unfortunately in Tiquisate, in order -- the winter months, when we had the cold weather, the colder weather in Guatemala City, we would have to

reduce that grade, which meant that we have the bananas -- we had to reduce -- would be with reduced weight. The bananas would be thinner. In other words, we would have to harvest them, instead of at 92 days, maybe at 80 days or 75.

Q Does that affect the marketability of the bananas?

A That does. That is correct.

Q In regard to the boxing, were there boxing plants constructed in Tiquisate in 1961 and 1962?

A That is correct, experimentally. We started experimentally and then we branched out.

Q Tell us about the irrigation needs of Tiquisate.

A When I arrived in Tiquisate in '56, we had about 7,000 acres under surface irrigation, and I observed that -- this is water that is supposed to flow over the ground to the plants, to the roots of the plants, and I noticed that the water was just disappearing. So I said this is doing no bood.

And they had started the undertree. So I recommended that we could increase the weight of the fruit, the size or bunches if we would go to undertree. And so we did. And we did put on considerable weight, increase the production this is not counting blowdowns -- because we got heavier bunches.

jgrf 4 van Diepen - direct

And finally we went right on through, in order to improve the complete division, and we made conversation on the overhead sprinkler type system.

Q How did the length of the irrigation season or the dry season in Tiquisate compare with other divisions of United Fruit?

A Tiquisate had a longer irrigation season.

Q How long was it?

A Well, the season would run, depending upon the rainfall, six to seven, eight months.

Q How did that compare with, say Almirante for irrigation?

A No, Almirante doesn't need any irrigation. The distribution of rainfall is very good.

Q And how about Armuelles and Golfito?

A Those are all shorter irrigation seasons.

Q During the dry season, and considering the fact that you are irrigating, what, if anything, happens to the bananas, or the plants?

A Excuse me. I am not reading you, Mr. Klingsberg.

Q During the dry season, even though you are irrigating, is there any affect of that on the banana leaves or other parts of the plant?

A Well, we had systems that did not give the

jgrf 5 van Diepen - direct

required amount of water, and so this is one of the reasons we went to the undertree, one of the reasons we got away from the overhead sprinkler type, because the overhead sprinkler type, you had dry triangles. And when you have dry triangles, why, you have no production. Those plants dry up and do not produce.

Q Was the undertree irrigation more expensive than the other type?

A It was about the same in cost as the overhead sprinkler type; expensive, yes.

Q Did you ever have leaf burning at Tiquisate?

A Well, during the winter period we did have some leaf burning and we also had some burning of the fruit.

Q What does leaf burning mean?

A Well, leaf burning is where your leaves dry up along the edges, curl up, and that reduces -- of course reduces their 100 per cent functioning.

Q Were there any volcanos in Guatemala?

A Yes. There is a string of about 14 volcanos, starting with the border of Salvador way to the Mexican border.

Q Were there any volcanos in the Tiquisate area?

A Well, there are volcanos right behind Tiquisate.

Q Did that have any affect on the banana cultivation?

A Well, periodically volcano Fuego would erupt

and we would get all that volcano ask into the cultivations, on the the fruit. And of course that really messes up the fruit because with the abrasion and the scarring, why, actually we had to reject some of that, we couldn't ship it, right there at the loading stations.

Q In other words, that would not be reflected in the damage in transit chart?

A That is not reflected.

Q Now, can you tell us whether in 1962 and 1963 there was any eruption of volcanos and problems from volcanish ash?

A I was not in Tiquisate at that time.

Q No. But did you visit Tiquisate or receive reports in the regular course of business which informed you of that?

A I can't recollect.

Q I show you Defendants' Exhibit 282 for identification, which is a telegram from DeLawder to Miller, copy to you, dated August 16, 1962, and Defendants' Exhibit 366 for identification, which is a telegram dated December 30, 1963 to Mr. Tilley with a copy to you, and ask you if you received those in the regular course of business?

A Yes, that is correct.

Q I show you Defendants' Exhibit 297 for

identification, which is a memo from DeLawder to Miller dated November 14, 1962, copy to you, and ask you if you received that in the regular course of business?

A That is correct.

Q Was it the regular course of business of these persons to report to you on the events, including the volcanic eruption and the volcanic ash which are mentioned in these exhibits?

A That is correct.

MR. KLINGSBERG: I offer in evidence Defendants' Exhibits 297, 282 and 366 for the purpose of establishing the volcanic ash problem which is described therein.

I'll receive them.

(Defendants' Exhibits 282, 297 and 366 for identification, received in evidence.)

BY MR. KLINGSBERG: Mr. van Diepen, what is the chilling point of bananas?

A The Gros Michel is below 53 and the Valery below 56.

Q Mr. van Diepen, you testified that the length of haul at Tiquisate to Barrios was 300 miles.

How does that compare with the other producting divisions of the United Fruit Company?

A Tiquisate to Barrios is the longest of any of the divisions by far.

Q How far was it from Bananera to Puerto Barrios?

A 25 miles would be from Bananera.

Q How about Armuelles?

A Armuelles would be around 30 to 35 miles.

Q Would you go through the rest of the producing divisions?

A Bocas, Panama, would be about 30 miles. Honduras would be about 90 miles. Golfito would be about 70 miles.

Q We have had testimony about Defendants' Exhibit 189 in evidence, which is a report from Mr. Miller to Mr. Sunderland dated March 9, 1961, rating various divisions in regard to the Valery banana.

What was your position when that memorandum was written?

A I was assistant to Mr. Miller at the time.

Q Did you work on the agronomic aspect of this study?

A Yes, I did, in addition to Dr. Dunlap.

Q Are you in accord with the conclusions therein?

A Yes, I am.

I have to say I only worked on certain facets of this, that is, the soil, the wind damage, minimum temperatures and expansion potential and the relative location.

Q You did not work on new [illegible]nies and political

climate?

A No. Not my area.

Q Would you explain to us the agronomic factors which led you to your rankings in regard to the soil condition?

A Almirante has got -- I mentioned previously that Almirante, Armuelles, Golfito, Honduras, and Bananera, the soil is alluvial, and Almirante has very good deep friable soil. I should say that when we looked at this whole program it was decided that we would only take first class soil for any planting of Valery. This was because of the increased production we would get from Valery so we needed less land. So we went only looking at the first class soil in every division.

Almirante came up first, Honduras second, Armuelles third, Golfito fourth, Bananera fifth and Tiquisate sixth.

This was the rating we gave.

Q You have already described, have you not, earlier the soil problems at Tiquisate?

A That is correct.

Q The next item is minimum temperatures and other growing conditions.

Can you explain to the Court the reasons for your ratings in that regard?

A Well, Almirante, Armuelles, Golfito, there is no problem because of any possible chilling, but in Honduras and Bananera, there is a problem periodically where we do get cold weather from the north and we have had chilling in both those divisions over the years.

So that's the reason why we rated Honduras 5, and Bananera 6.

As you know, Tiquisate was fourth and we rated Tiquisate fourth because of the problem of having to go over the highlands from Tiquisate to Barrios.

Q Was the problem of going over the highlands also taken into account on the relative locations where Tiquisate is rated last?

A That's correct.

Q Explain to us the wind damage rating.

A In Almirante very seldom do we have any winds, any windstorms. Golfito they do have windstorms, but, along with Armuelles, not very bad. Bananera is rated fourth. Windstorms are not heavy there.

I must say ever division once in a while

sustains windstorms but Honduras was rated fifth, then Tiquisate, sixth.

The divisions other than Tiquisate, why they may have one windstorm or two, but Tiquisate, why, when I was in Tiquisate, we had up to 17 different blows. So you can see that they were being pecked at all the time. This is one of the reasons we rated them number 6.

Q Mr. van Diepen, what is Panama disease?

A It's a soil-borne fungus.

Q What does it do to the banana plant?

A It kills roots and goes up into the plant. It's known as a systemic disease, and it blocks all the vessels that transport the nutrients and water to the plant, to the leaves, to the fruit.

Q How does it spread?

A It is spread by a soil-borne fungus. It's fungus in the soil.

Q For example, if there was a car going along the land could it pick up the fungus and take it to another part?

A That's right. Pedestrians can take it and tools and implements can carry it.

Q Once the Panama disease fungus invades the soil, is it possible to replant Gros Michel or Cocos bananas?

A No, it is not. They are not resistant. They are very susceptible to the fusarium disease.

Q Does Panama disease affect cotton?

A No, it doesn't, not this particular strain that we are talking about.

MR. KLINGSBERG: This is the whole Tiquisate. He is going to explain which are good banana lands and which aren't.

THE COURT: The question is does that include those which had already been sold off.

MR. KLINGSBERG: It is a map of the entire Tiquisate area.

THE COURT: I am not asking you that.

Are you going to testify to the banana-growing capacity not only of lands still owned by CAG but also lands that had already been sold?

MR. KLINGSBERG: What I am trying to establish --

THE COURT: I am asking the witness.

THE WITNESS: No, your Honor, I was going to point out the areas that Mr. Klingsberg was talking about not in bananas, the possibility for bananas.

MR. HANDLER: In '63.

THE COURT: It is a '64 map, you see.

MR. KLINGSBERG: Tiquisate -- the dimensions of this place didn't change.

THE COURT: That is why I asked him if he was going to include lands already sold off and he said no. I can lead a horse to water but I can't make him drink.

THE WITNESS: I can give the picture of the Tiquisate setup.

THE COURT: Give it including the lands that have been sold.

MR. KLINGSBERG: May 506 be received in evidence?

MR. BENDER: May we first find out what is about?

THE COURT: Yes.

Q What is the pink area?

A The pink area is the area that was donated to the government, 100,000 acres, back in 1954. 100,000 acres.

Q That is 100,000 acres which CAG ceded to the Government of Guatemala?

A That is correct.

THE COURT: In 1954, you say?

THE WITNESS: Yes, your Honor.

Q What was done with that land by the Government of Guatemala?

A Well, that was turned into an agrarian reform program and they selected growers, and the growers, they were alloted a certain area which they grew rice and corn and beans and maybe had a cow or two, some poultry.

THE COURT: No bananas?

THE WITNESS: No bananas.

Q Did the government do anything to encourage or aid the farmers to grow bananas there?

A No, they didn't.

Q What would have had to be done to enable those farmers to grow bananas?

A The government would have had to subsidize them at quite an expense.

Q In what way? What would have to be done to this land so bananas could be grown?

A Number one, you would have to have a railroad, roads, and irrigation and drainage, just the whole works, at a considerable expense.

Q Is there any other country where the country provided that sort of aid that you know of?

A Yes, in Ecuador they did that.

Q On Defendant's Exhibit 506, there is a yellow, circled portion. What is that area?

A That was virgin land that the company was holding for possible expansion for Gros Michel. The reason for the corridor there was to hold that area so that if we did go and expanded into this virgin area, we would be able to put a railroad through there to connect up with the Tiquisate railroad.

Q As of the time Tiquisate was closed, had there been any railroad connection to the yellow-enclosed area?

A No.

Q Had that land been prepared for banana growing in terms of all the things you mentioned: drainage, irrigation, et cetera?

A No, this is virgin land. Virgin land means timber, woodland.

Q Mr. van Diepen, coming to the Valery banana, how did the Valery banana compare with the Gros Michel banana in terms of its skin?

A The Valery is a thinner skinned banana.

Q In making your evaluation as to the places to grow Valery bananas, how does the thinness of the skin of the Valery enter into the picture?

A Well, this meant that we would have to go to boxing. We couldn't ship the Valery in stem form.

Q Did you expect that on the railroad's haul the Valery would have a better or worse performance than the Gros Michel?

A Worse performance.

Q Why is that?

A Because of the thin skinned nature of the banana. Very susceptible to bruising and scarring, abrasion.

Q Which ripens faster, the Valery or the Gros Michel?

A Once it's triggered, the Valery.

Q And in connection with the sending of bananas in boxes, how does that factor enter into your consideration?

THE COURT: Consideration of what?

MR. KLINGSBERG: Of where to plant Valerys.

A Well, naturally when we were preparing this memo of Mr. Miller's, we were looking for the shortest haul to port in evaluating all the divisions.

Q How, specifically, did the question of ripening faster enter into the consideration?

A Well, number one, we have to deliver green fruit. We have to transport and discharge fruit, whether it's U. S., Canada or Europe, and from the area of Tiquisate, because of this warm, cold, warm, we had very poor results in delivering this fruit in green condition.

Q Did you expect that situation would be worse or better in comparing the Valery relative to the Gros Michel from Tiquisate?

A Worse.

Q Worse for the Valery?

A For the Valery.

Q What about the stem of the Valery, how did that compare with the Gros Michel?

A Excuse me?

Q How did the stem of the Valery compare with your Gros Michel in terms of how strong it was?

A Well, it has a weaker stalk, and like I said before, it is thinner skinned and we could not ship it in stem form, it had to be shipped boxed.

Q Which had a more fragile stem, the Valery or the Gros Michel?

A The Valery.

Q From your various experiments and observations, did you determine whether the Valery could be blown down?

A Yes, we had experiments in Tiquisate. The blow-downs were not as intense as the Gros Michel, but it worked out where if you had a wind of 32 miles an hour and it was low, in other words, right into the bananas, we would get losses.

Q Did you frequently have winds of more than 32 miles an hour in Tiquisate?

A Yes. Like I said a little while ago, I think,

I recollect up to between ten and 17 different blowdowns in one year, different windstorms of winds ranging from 32 to 59 miles per hour.

Q Did Tiquisate have more winds of that severity than other divisions?

A Oh, yes, definitely.

Q How did the root system of the Valery compare with the root system of the Gros Michel?

A Well, here again it's a shorter plant and you have a much smaller root system compared to Gros Michel and it was a shallower root system in the soil, in other words, the roots did not go down as deep.

Q You have already mentioned the light volcanic soil in Tiquisate. How did the short root system and the light volcanic soil enable the Valery in Tiquisate to withstand windstorms?

A Comparing the divisions, why, we had much more losses, there would be much more losses in Tiquisate because of that light volcanic soil.

Q During the period, sir, that you were manager or assistant manager of Tiquisate, did you negotiate any leases?

A In the normal course of business, yes.

Q What was the purpose or purposes of leasing land in the period of time that you were manager or assistant manager?

A Well, we had these areas abandoned because of Panama disease and we wanted to get some remuneration. So we leased these lands out for cotton and pasture. At about the time that I was there, why, a cotton boom had started on the West Coast, and this was very excellent cotton land.

Q Now, did any of those leases contain the purpose for which the land was to be used?

A Yes. We had to put down that this was cotton or this was pasture, because the amount that we charged for rental of these areas, why, for cotton, it was a higher rate than it was for pasture, so you had to stipulate that on the contract.

Q And why didn't you put that it could be used for bananas?

A Well, because it was land that had been abandoned for Panama disease. You can't grow bananas.

Q Was there a squatter problem in the period of time that you were in Tiquisate?

A Yes, we had a squatter problem that was, you might say, chronic. Whenever we had unrest in the country, they would use this as a premise to get in on company land, to plant corn and raise beans. The problem was that they would try to get in on land that we were holding for bananas, virgin land, and it would be difficult to get them off once they got established.

Q What did you do about that?

A Well, we had old squatter area below Tiquisate, below the banana farms, and we usually coaxed them into going into those areas. Eventually we marked of an area so that this was agreed on with the Government, so that they could go in and set up their shacks and plant whatever crops they wanted.

Q Did you lease any land for the purpose of helping to solve the squatter problem?

A Well, we leased lands--this was another form of protection for the company.

In other words, pasture land and cotton land, this was a form of protection where they wouldn't be overrun by squatters.

Q Was the cattle land fenced?

A The cattle land was fenced, that's correct.

Q Did that help to keep the squatters out?

A We went further than that. This virgin land we had to fense too to keep them out, land that we had set aside as potential banana land.

THE COURT: Can I get some idea? How much of the acreage, how much, is that virgin land that you speak of?

THE WITNESS: That's about, let's say, 50 to 65,000 acres.

Q Who had an easier time keeping the squatters out? The local lessee or CAG?

A No, the local people. They could do a better job than we could.

Q Was there ever any violence from the squatter situation?

A Well, yes. We had trouble. They gave our land agent a bad time, let's say.

As a matter of fact, after I left one American was killed because of this squatter situation.

Q I believe you testified that some of the land which was leased during your tenure was pasture land, is that correct?

A Pasture and cotton, both.

Q But some was pasture.

A Correct.

Q Was that suitable for banana growing?

A No.

Q During your tenure there, was also some land sold pursuant to PX 359 in evidence, 17,000 acres that had been formerly leased to cotton growers?

What was that acreage used for?

A Well, that was abandoned banana land that we leased to the cotton growers--

Q The land that was sold, we are talking about?

A And we turned around and sold them that land.

Q What was it used for?

A For cotton.

Q Could the purchasers have used it for bananas if they wanted to?

A No. It was abandoned banana land, Panama disease.

Q But there was no legal restriction on using it for bananas, was there?

A Absolutely not.

Q You have already testified about the 100,000 acres which was ceded to the Government on which bananas could have been grown. Was there any other land available

in Western Guatemala where bananas could have been grown that was not held by CAG or United Fruit?

A We estimated that there was possibly about 50,000 acres on the West Coast that was available for bananas, for development.

Q After Standard Fruit left in November 1961, was that land available for use in banana growing?

A Definitely.

Q Do you include that in addition to the 50,000?

A That would be included in the 50,000.

Q Would you look at Defendants' Exhibit 506 in evidence and show the Court where the IRCA tracks ended and where the CAG tracks began?

A Well, this is Rio Bravo (indicating) and this is the IRCA track, and this is all CAG, all the way through. It goes all the way down. You got a loop in here.

In other words, we had about 90 miles of track

in the Tiquisate area.

THE COURT: Did you go all the way to the Pacific?

THE WITNESS: Yes. It stops about here, your Honor (indicating).

THE COURT: How far is that from the coast?

THE WITNESS: It is about a couple of miles.

Q That is at the bottom of which farm?

A Ticanlu.

Q Who operated the trains on the CAG 90 miles of track?

A Well, the IRCA, brought the cars to the Tiquisate junction, in other words the empties from Barrios, and they left them there. Then CAG had their own spot engines and crews, spot crews, and they would take htose cars and spot them at the various farms to be loaded.

Q What is a load spur?

A A load spur is where the fruit is brought in from the farms by carts and tractors and loaded into the railroad cars.

Q And where would those have been located?

A Those would be located -- you would have one or two of these per farm area, and they would be sidings right along the main railroad.

Q And whose locomotives carried the cars thorugh

the Tiquisate plantation?

A These are CAG.

Q Now, did you ever visit the Standard plantation?

A Yes. I was there. I visited them about three or four times, particularly when Mr. Richardson was there. He was the manager. He was a great friend of mine.

Q At the Standard plantation, who brought the empties into the farm land to the places where they were spotted?

A IRCA did all the spotting. They did, because Standard didn't have any locomotives or cars.

Q And did Standard have any tracks?

A Yes. The IRCA built the tracks in to serve the farms.

Q They were IRCA's tracks.

A Right.

Q Now, can you tell us, please, from an agronomic point of view, what were the comparative advantages and disadvantages of growing cotton in the Tiquisate area as compared with banana growing?

A Well, cotton was grown on Panama disease-abandoned land, and this was good, fertile land for cotton and the growers that leased the land and eventually purchased the land they didn't have to do any clearing. All they had to do was take their produce in there and start land preparation and go to planting cotton.

Q Does cotton require the same kind of extensive irrigation that the bananas do?

A No. No irrigation for cotton.

Q Do cotton plants blow down?

A No.

Q Was it cheaper or more expensive to grow cotton than bananas?

A Cheaper to grow cotton.

THE COURT: How much do you get on a dollar yield on an acre of cotton as compared with an acre of bananas?

THE WITNESS: Your Honor, I don't know.

Q Did you plant Cocos after 1960 in Tiquisate?

A Yes, we had seedbeds and demonstration areas going.

Q Was there any other problem in 1962 besides the Panama disease and blowdowns which affected the production?

A Yes. We had a Nematodes survey made and found that Nematodes were doing a lot of damage.

THE COURT: To what, the Cocos?

THE WITNESS: The Cocos and Gros Michel.

Q I show you Defendant's Exhibit 122, a memorandum from van Diepen to DeLawder dated January 12, 1960, and ask you if that is a report which you made while you were manager in the regular course of business?

A That's correct.

Q It refers to cold nights. Were cold nights a problem in Tiquisate?

A That's correct.

Q Did that adversely affect the fruit?

A That adversely affects the maturing of the fruit, plant growth.

J O H N M . F O X , called as a witness by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KLINGSBERG:

Q Mr. Fox, would you tell the Court, please, when you first became associated with the United Fruit Company?

A With your permission, can I refer to a chronology here?

THE COURT: Yes.

A (Continuing) I became a director of United Fruit December 19, 1960.

Q Would you please run through the remaining items in your notes and tell us the various positions you have held and the time periods during which you held those positions?

A Yes. At the time I was a director I was president of Minute Maid Corporation. That I had sold to Coca Cola,

and I left Minute Maid after that sale and became executive vice president of United Fruit February 1, 1961. I was promoted to president and chief operating officer on September 28, 1964. I became president and chief executive officer April 1, 1965, and I became chairman and chief executive officer on April 19, 1967.

Then United Fruit became United Brands, and I became president of United Brands July 1, 1970, a position I resigned from on August 1, 1971. At that time, I became president of H. P. Hood, Inc.

THE COURT: Did you succeed Mr. Sunderland as president?

THE WITNESS: Yes; I did.

Q During the period of time beginning in February 1961, when you were executive vice president, what was the principal area of your responsibility?

A My first area of responsibility was to investigate and study the marketing aspects of marketing bananas for United Fruit.

Q Now, sir, can you tell us, during the period 1961 through 1964 -- and you may refer to the chart, Defendant's Exhibit 169-A in evidence -- which of the United Fruit divisions shipped to the eastern and Gulf Ports of the United States?

GWP 5 Fox - direct

A The banana divisions, as we called them, namely, the plantation areas that shipped to the eastern coast were, first of all, Guatemala, the Bananera Division, Tiquisate, the West Coast of Guatemala, Honduras in La Lima, the name of the town; the East Coast Division of Panama, known as Bocas or Almirante, and Armuelles on the West Coast of Panama.

We also had some shipments from Ecuador, some shipments from Santa Marta in Colombia, minor shipments from the Dominican Republic, and I believe some test shipments from Jamaica.

THE COURT: What time was this?

MR. KLINGSBERG: The question was 1961 through 1964.

THE COURT: Hasn't that been covered by Mr. Sunderland?

MR. KLINGSBERG: It is a preliminary question, your Honor.

THE COURT: I don't want repetition. There isn't any point to that. When you are dealing with objective facts, Mr. Sunderland has put them in the record. You don't need Mr. Fox for that.

Try to ask questions where Mr. Fox can supply relevant information.

GWP 6 Fox - direct

Q Mr. Fox, in planning to produce and import bananas to meet the demand in the East and West Coast ports, did United look at or consider all these producing areas together, or did it consider particular places in isolation?

A We considered the whole area as a source of supply for the bananas we were selling throughout the United States.

Q Did United during this period, 1961 through 1964, make any plans for importation of bananas from Guatemala to the United States without considering what it expected to import from the other divisions you mentioned?

A No.

Q During the same period of time, could you tell us, please, the names of the companies and the source areas for bananas which you regarded as competitive with yourself in the Eastern and Gulf ports of the United States?

A I will try to remember them, Mr. Klingsberg. There were twenty-five or thirty companies engaged in the banana trade. The ones I remember that are not Spanish names -- because I have forgotten those -- are Standard fruit, of course --

Q Let's take Standard. Did Standard have plantations of its own in this period?

A Yes. Standard had plantations in the Central

GWP 7 Fox - direct

American area and also, I believe, in Ecuador.

Q In what countries did Standard have plantations during this period?

A In Guatemala, in Honduras, and at some point in this period they established some plantations in Costa Rica.

Q Is there any other company that shipped from Costa Rica to the East and Gulf ports of the United States?

A As I recall, the West Indies Fruit Company had some plantations and some shipments from Costa Rica.

Do you want me to finish on some of these companies?

Q Yes; please.

A Then, in addition to the ones I have mentioned, there were companies known as the Parker Fruit Company, Pan American Fruit Company, Continental Fruit Company, Neboa Fruit Company. Consolo had a company the name of which I have forgotten.

I can't think of any more.

Q How about Ecuadorian Fruit Company and Mr. Staff?

A Yes.

THE COURT: You can lead him on a subject like this.

Q Andes Fruit Company? Mr. Lally?

A Yes.

Q Atlantic Banana Company?

GWP 8 Fox - direct

A Yes.

Q Thatcher Banana Supply Company?

A Yes.

Q Now, sir, were bananas imported from all of the tropical countries you mentioned suitable for purchase by jobbers in the United States and consumption by consumers?

A Yes.

Q Did the quality of the bananas imported from these places vary from one shipment to another?

A Yes. Banana quality, the nature of the fruit and the nature of the way it is grown, weather conditions, shipping conditions, created a great variety in quality.

Q How did the Tiquisate quality compare with the quality of the bananas from the other areas imported both by you and your competitors?

MR. BENDER: I will object to that, your Honor. We have statistics in the record which bear on quality, and I don't think this witness should be permitted to give his opinion on that.

THE COURT: I will allow his opinion.

A In my opinion, the quality of Tiquisate Fruit in general was below that of other areas. There were times when it was quite acceptable, but there were other times when it was inferior.

GWP 9 Fox - direct

THE COURT: Wasn't there a time you were getting more for the Tiquisate fruit than you were for the East Coast fruit of Guatemala?

THE WITNESS: Yes. I think that could have happened, your Honor.

THE COURT: Why would that be?

THE WITNESS: It would be occasioned by a poor condition that might have resulted from weather conditions and other sources at that particular moment in time, in which Tiquisate fruit came through in good shape and was viewed by the buyers, who were very, very particular, to be superior. But it was not the general rule.

Q Even when the general rule applied and the Tiquisate bananas were inferior to the other bananas, were they regarded by you as nevertheless competitive in these markets?

A Yes. Bananas are bananas, Mr. Klingsberg, and the fact that they originated in one location or another in the tropics made no difference as far as the market was concerned, and no difference at all as far as the housewife is concerned. She couldn't tell one from another.

Q Did the price received for bananas from the various locations you have mentioned, both yours and competitors, vary from day to day, week to week, month to month?

GWP 10 Fox - direct

A Yes. The price for bananas is probably as volatile a food pricing situation as any I have ever seen. It would vary from very, very low figures, sometimes not sufficient to cover the freight from the tropics to the market, to a higher figure, which would be acceptable from a profit point of view. But there would be a range, a very wide range, and a constantly changing range.

THE COURT: What is that based on? Supply and demand or other factors?

THE WITNESS: Supply and demand primarily. Basically supply and demand. There were a few other, minor factors at times, your Honor. A major snowstorm in the East would create a tremendous back-up of fruit in the ports and a chaotic marketing condition.

THE COURT: That is supply, I suppose.

Q Was the price of Tiquisate bananas affected by the comparative quantity and quality of bananas coming from the other areas you mentioned?

A Yes.

THE COURT: Are there prices for banana futures, too?

THE WITNESS: No.

Q Did Standard Fruit own its own banana ships?

A They either owned them or leased them. They had

GWP 11 Fox - direct

ships that were dedicated to service of their fruit, but I believe most of the ships were leased, not owned.

Q Where did the other competitors you mentioned obtain their shipping?

A There were charter arrangements made, and there was space aboard the Grace Line ships that serviced primarily the Ecuadorian supplies, so that there was adequate shipping available to anyone that wanted to get into the business.

Q Did Brunx Line and Colombiana also, in addition to Grace, regularly offer space to competitive banana shippers on their boats?

A That's true.

Q In addition, were there other shipping companies that provided shipping space to your competitors?

A I am sure there were. I don't remember the names of them.

Q What did it take to enter the market for the importation and sale of bananas into the United States?

A It took very little as far as assets were concerned. You would have to establish a buying office in the Ecuadorian area to make arrangements to buy fruit, arrange for shipments to the ports on these charter boats in these spaces that were allowed and available, and at the marketing end an office with a telephone or two would be all that was

GWP 12 Fox - direct

needed to handle the marketing side of getting in the banana business. Ease of entry was very, very simple.

Q Did you ever visit Ecuador?

A Yes. I visited Ecuador on several occasions, for two or three days at a time.

Q Did you fly over and observe the plantations?

A On one occasion I took the company plane, and they wanted to show me the vast extent of the plantings that were going on in Ecuador, and from the air I observed what appeared to be a fifty-mile solid planting of bananas in a corridor right up the center of the country.

Q Did you also receive reports from your people in Ecuador in the regular course of business as to the nature of the Ecuadorian banana operation?

A Yes.

Q And what were you informed and what did you observe, for example, in regard to the approximate amount of acreage that was used for banana growing in Ecuador?

A Well, I never measured the acreage, but I had reports that indicated there were something in the order of 400,000 acres of bananas in production, new plantings constantly going in, all with the assistance of the Ecuadorian Government.

The supplies, as far as we could determine, were

GWP 13 Fox - direct

absolutely unlimited.

THE COURT: What kind of banana were they growing there?

THE WITNESS: They were growing Gros Michel there at that time.

Q I show you a document which was marked Exhibit 542 for identification.

MR. KLINGSBERG: Mr. Bender, do you have any objection to t[illegible]?

MR. BENDER: No objection.

MR. KLINGSBERG: I offer Defendant's Exhibit 542 in evidence.

(Defendant's Exhibit 542 for identification was received in evidence.)

MR. KLINGSBERG: If your honor please, this document is one of the reports to which Mr. Fox referred, and it stated:

"It is common knowledge that for many years total available production has never been shipped, due to lack of purchasers."

That talks about Ecuador.

THE COURT: Lack of what?

MR. KLINGSBERG: "It is common knowledge that for many years total available production has never been shipped,

GWF 14 Fox - direct

due to lack of purchasers."

That is in regard to Ecuador.

MR. BENDER: May I finish that sentence, since Mr. Klingsberg stopped in the middle?

THE COURT: Sure.

MR. BENDER: "However, 1964 looks like the year that Ecuador will reach its full potention, and this makes Eddie Taylor's task difficult."

THE COURT: What was Eddie Taylor's task, that was referred to in that memorandum by Miller?

THE WITNESS: I will have to see the memorandum. I don't know.

I am trying to recall back to the date. I think we were looking for supplies in Ecuador as a fill-in source, and the difficulty expressed hear by Miller I am sure refers to the fact that the only way you could really tie up high-quality supplies and depend upon them --

MR. BENDER: I can't hear you, Mr. Fox.

THE WITNESS: -- depend upon these supplies was to go into long-term contracts with the growers, and we didn't want to go into any long-term contracts in Ecuador, because our Valery was coming in in such spectacular fashion, and it was difficult for us to gauge how much of the fruit would be supplied by our own plantations, so Eddie Taylor's

job, trying to get fruit on an on-and-off basis, was a very difficult problem.

THE COURT: Thank you.

Q Mr. Fox, to your knowledge, in 1964 and subsequent thereto, while you were with the company, did the amount available in Ecuador continue to substantially exceed the amount shipped?

MR. BENDER: Your Honor, that is vague. Could we have it in terms of a specific time period? Does it mean up to '69 or '70?

THE COURT: Yes. I think you should give a specific time period.

Q Let's take 1964.

MR. BENDER: Could we have the question again as to 1964?

THE COURT: Yes. Read it back.

(Question read.)

A It did, to my knowledge.

Q Mr. Fox, were there ever occasions where, due to a blow-down or weather condition of some other sort, there was a gap in the amount of bananas which you had intended to bring into the United States ports?

A There were many occasions of that sort, because it is in the nature of the business to have blow-downs every year and loss of supply.

Q And on those occasions, were you able to fill the gap by drawing on the potential supply in Ecuador?

A Well, we weren't able to fill it always completely, because of our in-and-out role in Ecuador, but it was always filled.

In other words, the minute our supplies were shortened up by weather conditions, fruit came in in increased quantities from Ecuador to fill the vacuum.

Q By your competitors?

A By our competitors, for the most part.

Q Can you describe for the Court, please, the process of the sale of bananas which occurs as the banana ships of United and its competitors are approaching the Eastern and

GWP 24 Fox - direct

Southern Coast ports from the various areas you mentioned at the outset? How does it work?

A Well, basically, it is a type of an auction. Ships are destined for ports, both our own ships and those, as far as we know, of competitors. The trade is contacted when the ships are a day or two out of port, advised of the fruit that's coming in. Negotiations are engaged in in pricing that fruit to supply the demand of those buyers, which consists of banana buyers and chain store buyers, and hopefully by the time the ship is tying up it will have been sold at an agreeable price.

THE COURT: Let me ask you a question right there. This is what I don't understand about the business.

That means that the buyers are buhing the bananas sight unseen?

THE WITNESS: Yes; subject to their inspection.

THE COURT: It is subject to inspection?

THE WITNESS: Subject to inspection when the ship docks.

THE COURT: Does the price change upon inspection?

THE WITNESS: Quite often. If the fruit does not measure up to what the salesmen have told them what the condition is.

THE COURT: Do you have a surveyor there?

THE WITNESS: The buyers do inspect the fruit as it comes off.

THE COURT: Suppose there is a disagreement between the buyer and the seller. What happens?

THE WITNESS: We try to get it settled.

THE COURT: Without any third party intervening?

THE WITNESS: Yes. You are dealing with a perishable commodity.

THE COURT: You have to move fast?

THE WITNESS: I have described it like selling ice in a hot sun.

THE COURT: The only reason I asked you is, you say you don't sell it as a Tiquisate banana or as a Cocos banana.

THE WITNESS: We sell it as bananas.

THE COURT: How do you describe the quality of the fruit to a man who hasn't seen it yet?

THE WITNESS: These are all very knowledgeable banana people that are buying and also selling, and they usually describe it as to its grade, which means the degree of maturity that the fruit has reached on the tree before it is cut.

THE COURT: Size?

THE WITNESS: Size. When the fruit moved from

GWP 26 Fox - direct

stem fruit to boxed fruit, we tried to have uniformity of clusters in the box, and it was our objective, from quality control and inspection at the port and at the farms, to up-grade the quality as high as possible, and we did develop a reputation for having high quality fruit by that device.

A lot of this is based on trade relationship, cluster relationship. They trust the people they are doing business with. We found that if on arrival, sometimes even at the marketplace after the fruit had been put upon trucks and freight cars, if it did not arrive in the condition that it should have, we would have another negotiation, and quite often have to reduce the price.

THE COURT: What I don't understand is, when you put Valery in, for example, weren't you telling the buyers before the ship came in that these were going to be Valeries instead of Gros Michel?

THE WITNESS: We had to tell them it was Valery.

THE COURT: You had to tell them something about the nature of the banana?

THE WITNESS: The Valery fruit had to be ripened in a different process and different procedure than the Gros Michel, but as far as the source of the fruit was concerned, whether it came from Honduras or Tiquisate or Panama, that was immaterial as far as the buyer was concerned.

GWP 27 Fox - direct

THE COURT: And yet you said that the Tiquisate banana was inferior in quality to the others? Didn't the buyers know that?

THE WITNESS: Yes; they knew it when they bought the fruit. This was what the averages showed at the end of the year, a given marketing year, that we would average a lower price quite often for our Tiquisate fruit because of quality.

THE COURT: All right.

BY MR. KLINGSBERG:

Q Was the price which United received for its bananas affected by the price which your competitors were asking for the bananas they were bringing into port?

A Oh, yes. It was a free-for-all, Mr. Klingsberg.

Q What do you mean by that?

A The competitors' fruit was selling head-to-head with United Fruit's fruit. If their prices were dropped, we would have to lower our prices if we wanted to move our shiploads.

I have been in the food business most of my life, and I have never seen a more competitive, more turbulent, more unpredictable marketing situation than on fresh bananas.

Q Did the jobbers have any influence over the price?

GWP 28 Fox - direct

A Of course. They were the buyers.

Q How does that work?

A Well, if the jobbers for any reason, if their own supplies were heavy and their inventoris and their ripening rooms, or if they felt there was an excess supply coming in, they would slow down in their buying almost in unison. As a result, there would be an immediate surplus of fruit in the port and in the marketplace.

After that would happen, we would have to move the fruit onto rail cars and roll them, as they say. They are called rollers. These are unsold quantities of fruit moving inland, and our sales department desperately trying to sell that fruit as it moved into the market in the inland cities.

As it moved, of course, the price would drop even further.

Q Roughly speaking, how many jobbers were there in the Eastern and Gulf ports of the United States?

A Oh, there were hundreds, Mr. Klingsberg. Every city had half a dozen or more.

Q Were there times when poor quality bananas sold at higher prices than better quality bananas had sold shortly before or shortly after?

A Yes; there would be times when the supply situation would be tight, and a poorer quality fruit would sell for a

better price than a higher quality fruit would sell when there were a lot of bananas. The supply situation was very critical.

MR. BENDER: I missed that last part.

THE WITNESS: The supply situation was very critical on the price.

Q Is it a fact that one of your projects to which you were assigned in connection with the shift to the Valery banana was a shift to boxing bananas rather than selling them on the stem?

A Yes. Mr. Sunderland viewed the change of method of shipment from on the stem to boxing as basically a marketing problem, which it was, and as I was in charge in the marketing function, I was given the assignment of converting the company's division to boxed fruit.

Q In or about 1962 and 1963, were there experiments with boxing in the various tropical divisions?

A Yes.

Q Was Tiquisate one of the places where there was some experimental boxing done?

A Yes. Every division was ordered to experiment with boxing. In an effort to expedite the conversion and not having any pattern of boxing to follow, it was a new thing in the industry. I decided to give every division

GWP 30 Fox - direct

their own heads to experiment with what they thought was the most efficient way to put bananas into boxes.

Q Did Tiquisate get a late start in this boxing work?

A No; I think they were all started about the same time. There might have been a little variation in time, but I don't remember that, Mr. Klingsberg.

Q Is there anything which retarded the progress of the boxing experiment in Tiquisate?

A Not to my knowledge. The labor problems in Tiquisate were always worrisome. But that's the only thing that might have slowed it down at all.

Q Let me see if I can refresh your recollection. Do you remember any problem with obtaining the boxes, with importing the boxes?

A Yes. We had some difficulties with the Guatemalan government on boxed imports, as I remember, but the Guatemalan government was difficult on everything that we did, so that was nothing new.

Q What was the purpose, in 1962 and early 1963, or the purposes, of having these boxing experiments in Tiquisate?

A The same purpose that we had everywhere else. We had to plan for a complete conversion of the marketplace to boxing. We couldn't envision a combined situation. So we were trying as hard as we could and as fast as we could to

to get all our operations into boxes.

Q So that you had not decided yet at the time you were doing the boxing experiments to close down the Tiquisate operation; is that correct?

A By no means.

Q Did you have a problem --

MR. BENDER: May we have a date as to that last question, your Honor?

MR. KLINGSBERG: We have a document which I offered in evidence this morning. Mr. Bender didn't object to it. It shows, for example, March 11, 1963, boxing experimental work.

The question was addressed to 1962 and the early part of 1963.

THE COURT: All right.

MR. BENDER: Was the answer given in that same context?

THE COURT: Read it back for Mr. Bender,please, Mr. Wolf.

(Answer read.)

Q This was in 1962 and the early part of 1963; is that correct?

MR. BENDER: I object to leading the witness on this, your Honor. I think Mr. Klingsberg is putting words

in this witness' mouth about the time frame that we have here, as to when they decided to close down Tiquisate, as to when these experimental shipments were taking place on boxing.

THE COURT: All right. I know it's difficult. It is very hard for a person to remember a month and a year a long time back.

Try it that way first, if you don't mind, Mr. Klingsberg, and then, if the witness' recollection is insufficient, then you can refresh him.

Q Do you recall approximately when the boxing experiments were in progress at Tiquisate?

A I don't recall the exact time. I know they started with all the other experiments approximately.

MR. KLINGSBERG: We have documentary evidence of this, your Honor.

Q Mr. Fox, did you have a problem in general, in terms of convincing the jobbers to shift over from the stem method to the boxing method?

A Yes. It was a major change in their method of operation. It required substantial investments on the part of the jobber to redesign and rebuild their ripening facilities. They had to develop new techniques, new timing formulas. It was a major selling job to convince the jobbers

that this was indeed an improvement in the whole banana operation, to go to boxes.

Q In terms of what you called a selling job, how did you select the bananas for these experimental boxing shipments?

A Well, we wanted them to be as good as possible, so that the turnout, the result, of their early purchases of boxed bananas and their early experience with it would be as favorable as possible. So a great deal of care was taken in these early shipments of boxed fruit in order to convince the trade that this was the coming thing.

Q I show you Defendant's Exhibit 318, which was marked in evidence this morning without objection, which says:

"Due to the long haul to Barrios, it is not considered safe to box more than one day for each shipment."

What does that mean?

A Well, I presume it means --

MR. BENDER: I object in terms of his presuming what something means.

THE COURT: Yes.

THE WITNESS: This is what it means to me. Can I answer it that way?

THE COURT: It is the same thing.

What is the document? Let me see it.

(Document handed to the Court.)

THE COURT: What is the question? Read it back.

(Question read.)

THE COURT: What did it mean to you when you received the memorandum from Mr. Miller? You may answer that?

THE WINTESS: It meant to me that they could not box two or three days in advance of loading the fruit onto the trains to go across the country to Barrios, because that would add too much time to the fruit in the boxes at the temperatures of the tropics, with a resulting fact the fruit at the far end, when it arrived in Barrios for loading upon the ship, would be on the verge of ripening or turning or spoiling. So they had to box everything that they were going to ship the day they were going to ship it, or just prior to the shipment, and one day was all they could box.

Q What effect did that have on the amount of boxing capacity that would be needed?

A It would increase the boxing capacity needs tremendously, because you would have to box everything the day before the train left. You couldn't spread out the boxing.

Q In other divisions, was it the practice --

MR. BENDER: I object to leading him.

Q In other divisions, what was the practice in regard to the spread of boxing between the time of harvest and shipment?

A In other divisions we could box two or three days ahead of the shipments, the sailing.

Q When you say two or three days ahead, do you mean you would spread out the boxing over the course of two or three days?

A Yes.

Q You testified that the boxing from Tiquisate was experimental --

THE COURT: Excuse me. I don't understand how that saves boxes. It may save time, but how does it save boxes when you do it in one day or two days? You need the same number of boxes, don't you?

THE WITNESS: We are talking about boxing station capacity. The facility that we cut the fruit and put it into boxes would have to be much greater in number and in capacities if we had to do it all in one day prior to the shipments being loaded.

Q You would need more labor, would you not?

A We would need more of everything.

Q You testified that in connection with these boxing

experiments you were picking only the best fruit in order to convice the jobbers that they ought to shift over. In light of that fact, would you regard --

MR. KLINGSBERG: I withdraw that.

Q Mr. Fox, did there come a time in or about September 1962 when Mr. Sunderland assigned you to conduct certain negotiations with IRCA?

A Yes.

Q I am going to run through some documents with you very quickly, since most of them are in evidence, and I will try not to duplicate what is in the documents, but just to ask you to fill in some gaps.

The plaintiff has marked Exhibit 652-A, which contains a memo that Mr. Haase wrote of a meeting that you attended on September 6, 1962.

Now, what brought about that meeting?

A The meeting was brought about to try to get a resolution to the problem -- one of the problems we were facing in Tiquisate, and that was the division was in serious straits financially. It was a very marginal division from the point of view of profitability, and Mr. Sunderland assigned me to the job of trying to find some way to reduce the costs and improve the service of the railroad that was serving the division for the Port of Barrios.

Q One of the problems at this time is, you wanted to know what rates IRCA was planning to charge on bananas shipped in boxes rather than on stems; is that right?

A Yes. The boxing program was coming along, and it was requiring a whole change in our procedures everywhere, and this was another factor that had to be considered.

Q Incidentally, did you ultimately find whether you could ship more bananas in railroad trains in boxes than by stems?

A The early planning for it indicated that we would be able to increase the efficiency of our shipping procedures. However, as it later developed, we found we were not able to increase the amount of fruit that we could ship either with our ships or, as far as I know, with our trucks and trains by boxing. There was not -- there was just not that much efficiency gained by it.

Q Now, there is reference in the document to the fact that Weber, who was the attorney for IRCA, "disputed alleged termination date, said due to many legal lawsuit Ripley angles we were in a delicate situation re rates and considered UF should make a draft."

Now, was one of the projects which was supposed to follow this meeting that you were supposed to make a draft of some new agreement?

A Yes. One of the things we discussed was to try to bring all of these arrangements together into one new contract, one new agreement.

Q And did IRCA also request information from United as to their future shipments?

A Yes.

THE COURT: As to what?

Q Did IRCA also request information from CAG as to its future shipments?

A Yes. IRCA was quite naturally interested in knowing what the freight load plans were for the forthcoming months of operation, and it was our custom to furnish them with advance information of what we thought we would be shipping.

Q If you will turn to the next documents, Mr. Bender in his examination of Mr. Sunderland put in some documents which Mr. Sunderland, who was not involved in them, could not explain, and I wonder if you could try to do it for us.

In particular I am referring to Plaintiff's Exhibit 59, which is two documents, and Defendant's Exhibit 549 for identification.

A Referring to Exhibit 859, this is a wire directed to me advising me that they had not received the information that we had talked about at the conference, the information

being the combining of contracts.

THE COURT: The combining of contracts?

THE WITNESS: Yes.

THE COURT: What does that mean?

THE WITNESS: There were a number of different agreements and contracts that were involved in our arrangement with the railroad, and it was decided a good idea would be to try to bring them all together into one package.

THE COURT: You mean the trackage agreement with the other agreements?

THE WITNESS: Yes.

A (Continuing) This covering memorandum to me is my secretary's, Miss Jennings', initial, and it indicated that the matter is being referred to me, and Mr. Sunderland doesn't want the information to be sent along until I have had a chance to send it.

MR. BENDER: Pardon me. What was it? Would you read that answer again?

THE WITNESS: The answer --

MR. BENDER: The reporter.

(Answer read.)

Q Do you know of any reason Mr. Sunderland would not want information sent out until you got back?

MR. BENDER: I object to that.

THE COURT: Yes; that is objectionable.

Q Do you know of any reason why your secretary would write to you -- What was your understanding when you received this memo, the note, that your secretary wrote?

MR. BENDER: He already testified to that. He just stated.

THE COURT: Let him repeat it.

MR. BENDER: He didn't want the information --

Q What was your understanding of the reason for that?

A I was in charge of the program, and I was going to be the one to review any information that was sent to Mr. Haase.

Q What is Defendant's Exhibit 549 for identification?

A 549 refers to a wire sent by my secretary to Mr. Haase or the railroad, answering that I will give the answer when I return from the trip.

MR. KLINGSBERG: I offer Defendant's Exhibit 549 for identification into evidence.

MR. BENDER: No objection.

(Defendant's Exhibit 549 for identification was received in evidence.

Q Now, going back to Plaintiff's Exhibit 652-A, did you contact Mr. Haase as soon as you got back?

A From the date on this memorandum, which is a re-

capitulation of a phone call I made to Mr. Haase on October 4th, it indicates that shortly after I got back I did call him and talked to him on the phone about the matters we had been discussing.

Q That memorandum, Exhibit 652-A, states that you indicated to Haase that you would send him a memo shortly on what your production picture in Guatemala looked like, and especially for the next twelve months.

I show you Defendant's Exhibit 488 in evidence, which is dated October 12th, a letter from DeLawder to Haase, and ask if that is the information that you arranged to have provided pursuant to your promise in your telephone call with Mr. Haase.

MR. BENDER: I object to that, your Honor, as leading. I think the witness should have been asked what information was called for rather than the way it was put.

MR. KLINGSBERG: The memo says what was called for, and I read it.

THE COURT: I will allow it.

THE WITNESS: Would you read the question back, please?

(Question read.)

A Yes.

THE COURT: We will take a short recess now.

(Recess.)

BY MR. KLINGSBERG:

Q Mr. Fox, we were talking about your telephone conversation with Haase on October 4, 1962. The memorandum indicates that you also discussed with Haase the impending stock purchase of IRCA by Mr. Chalk.

Now, did that have any effect on your continuing to pursue this matter of drafting up a new series of contracts which had earlier been discussed with Mr. Haase and Mr. Weber?

MR. BENDER: I object to that as leading, your Honor.

THE COURT: What is leading about it?

MR. BENDER: It requires a yes-or-no answer, and I think that is the kind of question which is normally considered to be a leading question.

THE COURT: Read the question back again.

(Question read.)

THE COURT: It is only a preliminary question. I will allow it.

A Yes. We felt that if there was going to be a new owner to the railroad, that a matter of this nature would have to be discussed with him.

Q Did Chalk communicate with you or, to your know-

ledge with anyone else from United or CAG prior to his actual purchase of the IRCA stock on October 25, 1962?

THE WITNESS: Would you read that question back? It was a long one.

(Question read.)

A Before he bought the IRCA stock, no, not to me.

Q Do you have any knowledge if he spoke to anyone else at CAG or United?

A Not to my knowledge.

Q Did there come a time in January 1963 when you met with Mr. Chalk?

A Yes. There was a meeting with Mr. Chalk in Washington, as I remember it.

Q And that is reflected in Defendant's Exhibit 494 in evidence; is that correct?

A This memorandum reflects the gist of the meeting we held in his office on January 11th.

Q What was your understanding of how things were left at the end of that meeting?

A My understanding was that we would get from the railroad and/or Mr. Chalk some indication of what they could do, if anything, to reduce freight rates in order for us to make the Tiquisate Division more financial viable.

MR. KLINGSBERG: The next exhibit, if your Honor

please, is 526, which, according to our records, was in evidence but not in the transcript.

MR. BENDER: I have no objection to it, your Honor.

MR. KLINGSBERG: In that case, I would like to re-offer Defendant's Exhibit 526 for identification.

THE COURT: Received.

(Defendant's Exhibit 526 for identification was received in evidence.)

Q According to Defendant's Exhibit 526, you wrote to Mr. Chalk on March 27, 1963. Had you heard from him, to your recollection, between the January meeting and the date you wrote this letter?

A No; I had not heard from him, and this letter was a reminder to him that I had not heard from him.

Q In this letter, you asked Mr. Chalk if he had comeup with any suggestion, and the next exhibit is a letter from Mr. Chalk to you dated April 18, 1963, Defendant's Exhibit 524.

Was that the first you heard from Mr. Chalk after you wrote to him in March?

A Yes. This is the first I heard from him.

Q At the time that letter arrived, apparently you were out of town, as indicated by Defendant's Exhibit 523; is that correct?

A That's correct.

Q And then the next contact appears to be Defendant's Exhibit 342 for identification, which is August 6, 1963.

Does that accord with your recollection?

A Yes.

MR. KLINGSBERG: I would like to offer in evidence Defendant's Exhibit 342 for identification, which Mr. Bender has advised me he has no objection to.

(Defendant's Exhibit 342 for identification was received in evidence.)

xxx

Q According to Plaintiff's Exhibit 988, a meeting was held with Mr. Chalk in August of 1963, which you attended; is that correct?

A Yes.

Q This memorandum, Plaintiff's Exhibit 988, states:

"Mr. Chalk discussed briefly with us and later with you the possibility of he and some of his associates purchasing Tiquisate or possibly some other division as well. He was given a copy of the consent decree. You agreed to discuss the matter further with him at a later date."

The "you" referred to there is you, Mr. Fox.

Was that the first time in all of your contacts with Mr. Chalk that he raised the possibility of purchasing

a division under the consent decree?

A To my recollection, that was the first time I ever heard of his interest in it.

Q What was your understanding in the course of the talks beginning with this August 29th meeting as to on whose behalf Mr. Chalk was negotiating?

A I didn't know on whose behalf he was negotiating, whether it was the railroad or himself.

Q He said "the possibility of he and some of his associates" in this memorandum. What did you understand that to mean?

A That could have been anybody.

THE COURT: Don't try to squeeze it dry, Mr. Klingsberg.

Q Then a meeting was held with Mr. Chalk in September, which is reflected in Defendant's Exhibit 496; is that correct?

A Yes. This is a memorandum covering that meeting.

Q Does that accord with your recollection of the substance of the discussion?

A Without reading every word of this lengthy memorandum, I would say this covers the gist of that meeting.

MR. BENDER: I didn't hear the answer.

THE WITNESS: I said, without reading every word in

this lengthy memorandum, this seems to cover the gist of the meeting that we held in Mr. Chalk's office in Washington, or, rather, New York, I think it was. This one was in New York.

Q Did you consider that Mr. Chalk had made any concrete offer to buy the Tiquisate Division at this meeting?

MR. BENDER: I object to that, your Honor. That calls for a conclusion.

THE COURT: Sustained.

Q There is reference to a $40,000,000 figure at page 8. What was your understanding of the reference to that figure?

A That was a very rough calculation of what the percentage of fruit represented by the Tiquisate Division was to the overall company production, and by a simple division of what the net worth of the company was, we came out to a $40,000,000 figure. There was no substance or back-up to to that at all. It was a ball-park estimate.

Q Was it stated by anyone at the meeting, either as a price demand or a price offer, for Tiquisate?

A Oh, no.

THE COURT: Who was the one who created the figure? I don't have the memorandum in front of me.

THE WITNESS: As I recall, it came from Mr. Roddy,

who was the executive in detailed charge of the spin-off or the sale of our division in compliance with the consent decree.

THE COURT: He was a lawyer?

THE WITNESS: No; he was not. He was a marketing man.

Q Does page 9 indicate the way in which this meeting was left?

A Yes.

Q And does that refresh your recollection as to where the parties stood concerning the possible price at the end of the meeting?

A There had been no decision made on a price. We were going to give Mr. Chalk some information as to what was involved in the possible sale, and we talked about the approach to the Department of Justice to see if such a sale would comply with the consent decree.

Q Chalk said he would bargain hard on the price, as indicated in the memo?

A That's right.

Q In Plaintiff's Exhibit 43, which is the letter you wrote to Mr. Chalk, did you send him the information had been promised at the previous meeting?

Yes. This letter covers basically what I had

agreed to send him at the previous meeting, with the exception that I told him in this letter we were considering only the sale of Tiquisate and not the East Coast of Guatemala.

MR. BENDER: Could I have that read back? I missed part of that. That last part, "with the exception that".

(Answer read.)

Q Now, the figures refer to a $6,500,000 estimated salvage value and a $22,000,000 investment that CAG had made in Tiquisate.

What was your intention in mentioning those figures in regard to possible price that might be later taken up?

A Well, this was to give him an indication of the bracket of price that we would consider as an acceptable offer. We knew that we could salvage the division for something in the order of $6,500,000 on a piecemeal basis as a minimum, and we knew that we had spent almost $23,000,000 in putting the division into being. So it was an area of beginning price negotiation.

Q Why did you withdraw Guatemala East from consideration for the time being?

A Well, the company was in a tremendous state of flux at this particular moment. We didn't know precisely

what the programs for the new variety fruit would be for the future. We didn't know what the political outlook would be for these countries. We just felt that until the whole situation clarified for the company and its plans, we ought not to offer the Bananera Division.

Q Was Bananera one of the divisions considered as a possible place for growing Valery bananas at this time?

A Yes.

Q Defendant's Exhibit 521-A ir evidence is a memo reporting to you on the advice which had been given to the Guatemalan Government that CAG planned ceasing banana operations in Tiquisate.

Did you advise Mr. Chalk of that fact?

A Yes; I did.

Q When did you advise him?

A I advised him at approximately the same time that we sent the letter to the President of Guatemala.

Q What did you advise Chalk?

A That the decision had been made, and that we had so advised the Government, to close down the Tiquisate operation.

Q Defendant's Exhibit 43, your letter to Chalk, also states:

"I should emphasize that time is short, and a

number of persons have expressed interest in acquiring the assets of the division in the event the company does not use them for banana operations."

Despite the fact you had written that to Chalk and told him about the decision to close, when was the next time you heard from him or spoke to him?

A Well, the next time was in November, November 18.

Q At that time, there was a telephone conversation with Chalk?

A That's right.

Q And that memorandum reflects the substance of the telephone conversation?

A Yes. In this he decides, or he indicated he thought because we had withdrawn Bananera, the East Coast Division, from any consideration as part of a sale, it would not be worth while to contact the Department of Justice.

Q Is this the first time that Chalk indicated any interest in just purchasing land in Tiquisate, apart from doing something under the consent decree?

MR. BENDER: I object to that, your Honor.

THE COURT: Sustained.

Q When was the first time that Chalk indicated any interest in purchasing land at Tiquisate apart from the consent decree?

A At this time, with this telephone call.

Q Is there anything which to your knowledge would have prevented Chalk from going out on the open market and buying land which CAG was selling, along with other purchasers in Guatemala?

A Of course not.

THE COURT: Wait a minute. Didn't he own a railroad, and if he bought the land for bananas, didn't he have to get permission from the Government to have a railroad-owned banana plantation?

THE WITNESS: Not to my knowledge, your Honor.

THE COURT: All right.

I thought Mr. Sunderland said it the other way. I am not sure.

MR. KLINGSBERG: Yes. Mr. Sunderland is a lawyer. Mr. Fox is not.

THE COURT: Then why do you ask him legal questions?

Q Just to follow along quickly in the chronology, Plaintiff's Exhibit 68 is a memo of a meeting at the Department of Justice. Am I correct in understanding that you did not attend that meeting because you were -- What was the reason you didn't attend that meeting?

A I was probably busy doing something else. I don't know. I didn't attend it.

Q In any event, a representative of United was sent?

A That's right.

Q And Plaintiff's Exhibit 788 is a memo of a telephone conversation -- a transcript of a telephone conversation with Mr. Chalk, also in December.

I will pass that because it is a transcript.

Now, you wrote to Mr. Chalk on December -- Let me ask you this, Mr. Fox: You received a report, did you not --

MR. KLINGSBERG: I will pass that, too.

Q Mr. Fox, did you write Plaintiff's Exhibit 45 in evidence to Mr. Chalk, and does that accurately reflect the substance of the negotiations which were held up to that point in time?

A Yes. This letter really brings the whole discussion and negotiation up to date and indicates our need for early action.

Q Am I correct that as reflected in Defendant's Exhibit 417 in evidence a meeting was held of various United officials on January 9, 1964, in Boston, which you attended, at which the consent decree and the Chalk situation were discussed?

A Yes.

Q And you had at that time, did you not, Plaintiff's

Exhibit 46 in evidence, which was the last communication from Mr. Chalk prior to your meeting in January; is that correct?

A Yes.

Q What if anything did you report to the other officials at this meeting as to whether Mr. Chalk had made a bona fide offer for the purchase of Tiquisate?

A Well, I reported the contents of the letter of December 30th, which was an offer of sorts. However, the offer was so impractical that it really didn't make any sense to me, and I doubted whether it made any sense to anyone else, because he was asking us to sell him a large acreage of land in Tiquisate capable of producing a substantial banana operation at the price of one hundred dollars an acre, and at the same time we had to furnish him with all of the additional assets, facilities, human and otherwise, to operate a full-scale banana division in accordance with the consent decree.

It didn't really make any sense to us, because he was talking about ships and people, executives, marketing organization, the whole complex that was involved in satisfying the consent decree, and at one hundred dollars an acre it wouldn't have been a practical deal.

Q Just to wind this up, you wrote to Chalk on January 10, 1964, as reflected in Plaintiff's Exhibit 48,

advising him of your position on the negotiations; is that correct?

A Yes. I wrote to him because by that time it had become definitely established that the company had committed itself for the sale of these lands to a large number of individuals, former employees of the company, government officials and others, and there really was no practical way that we could recapture that land and present it in a package to Mr. Chalk so that he could operate a banana division.

Q I show you Defendant's Exhibit 372 for identification and ask you if that is a document a copy of which was contained in your files concerning the negotiations with Mr. Chalk.

A Well, this wasn't written to me, but it does outline the situation that Mr. Bump, who was the authorized agent to sell the land, found himself in on December 23rd.

Q Do you remember, the other day, Mr. Fox, we reviewed your file, and a copy of this document was contained in it?

A Yes.

Q And was this document one of your sources of information on the basis of which you wrote the January 10th letter to Mr. Chalk, Plaintiff's Exhibit 48?

A It was one of the sources, yes.

MR. KLINGSBERG: I offer Defendant's Exhibit 372 for identification into evidence.

MR. BENDER: I object, your Honor, on the ground that this document is hearsay from Mr. Bump to Mr. Holcombe, I believe it is addressed to, and it was found in Mr. Fox's file.

THE COURT: What is your objection? On the business records rule?

MR. BENDER: Your Honor --

THE COURT: Isn't it a report by an agent to his principal on the status?

MR. BENDER: Yes, your Honor. I would withdraw my objection if it is understood that when I offer a document from Bump to Holcombe, it also comes in under the business record rule.

My problem is this: that when I showed counsel for the defendant a document of a similar nature, I get an objection from them, and I told them that I have other Miller documents I would like to offer in evidence that are certainly authentic.

THE COURT: It would have to be tit for tat. It depends on what the category is.

MR. BENDER: I will withdraw my objection, your Honor.

THE COURT: All right.

(Defendant's Exhibit 372 for identification was received in evidence.)

xxx

Q Did you have any other information concerning the status of the land sales when you wrote Plaintiff's Exhibit 48?

A Yes. As I say in this letter, Mr. Ted Holcombe, who was the manager of the Guatemala operation, was asked to come to Boston to report in person on the status of these sales, which he did. Although he did not arrive in time for this meeting, he telephoned --

Q The January 9th meeting?

A Yes. He telephoned ahead that the land had been committed completely, and there was no real way to put the division back together again to offer it to Mr. Chalk.

He later arrived in Boston, and I met with him and reaffirmed the information that is contained in this letter.

Q Defendant's Exhibit 417, which is the memo of the meeting at United on January 9th, refers to other reasons for the position you took in this regard, particularly the preference of the company for a Plan A spin-off rather than a Plan C spin-off.

That was not included in your letter to Mr. Chalk. Nevertheless, was that one of the considerations in making

your decision?

A Yes; it was.

Q Did you personally participate in the Plan A spin-off procedures which were subsequently implemented by the company?

A Yes; I did.

Q There is one thing I forgot to ask:

When you were discussing this one hundred dollars per acre offer and, in addition, Chalk asking for other facilities et cetera, pursuant to the consent decree, what was the approximate price at which you were selling land to other people in the Tiquisate area who were not getting any extras under the decree?

A We were selling it for one hundred to $125, depending on its condition.

MR. KLINGSBERG: No further questions, your Honor.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

INTERNATIONAL RAILWAYS OF CENTRAL AMERICA, Plaintiff-Appellant, -against- UNITED BRANDS COMPANY, Defendant-Appellee.	Docket No. 75-7166
INTERNATIONAL RAILWAYS OF CENTRAL AMERICA, Plaintiff-Appellant, -against- COMPANIA AGRICOLA DE GUATEMALA, Defendant-Appellee.	Docket No. 75-7165 AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROBERT THATCHER, being duly sworn, deposes and says that he is employed by the law firm of Kaye, Scholer, Fierman, Hays & Handler, is over the age of twenty-one years and not a party to this action.

1. On the 8th day of July, 1975, deponent served a true copy of JOINT APPENDIX, VOLUME IV, annexed hereto, by depositing same, enclosed in a sealed postpaid wrapper in the post office box regularly maintained by the U.S. Postal Service at 425 Park Avenue, New York, New York, addressed to the following attorneys:

Leventritt, Lewittes & Bender
135 East 42nd Street
New York, New York

that being the address designated by said attorneys for that purpose upon the preceding papers in this action.

Robert Thatcher
Robert Thatcher

Sworn to before me this
8th day of July, 1975

Daniel A. Maher.

Notary Public

DANIEL A. MAHER
Notary Public, State of New York
No. 41-7666660
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1976